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

Rules and Regulations

Federal Register
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Thursday, August 25, 2011

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM49

Prevailing Rate Systems; Abolishment of Monmouth, NJ, as a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing an interim rule to abolish the Monmouth, New Jersey, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Monmouth County, NJ, to the Burlington, NJ, NAF wage area. These changes are necessary because the closure of Fort Monmouth will leave the Monmouth wage area without an activity having the capability to conduct a local wage survey.

DATES: *Effective date:* This regulation is effective on August 25, 2011. We must receive comments on or before September 26, 2011. *Applicability date:* FWS employees remaining in the Monmouth wage area will be transferred to the Burlington wage area schedule on the first day of the first applicable pay period beginning on or after October 15, 2011.

ADDRESSES: Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; email pay-*leave-policy@opm.gov;* or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; email *pay-leave-policy@opm.gov;* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The Monmouth, New Jersey, nonappropriated fund (NAF) Federal Wage System (FWS) wage area is presently composed of one survey county, Monmouth County, NJ. Under section 532.219 of title 5, Code of Federal Regulations, the U.S. Office of Personnel Management (OPM) may establish an NAF wage area when there are a minimum of 26 NAF wage employees in the survey area, the local activity has the capability to host annual local wage surveys, and the survey area has at least 1,800 private enterprise employees in establishments within survey specifications. The Department of Defense (DOD) notified OPM that the imminent closure of Fort Monmouth will leave the Monmouth NAF wage area without an activity having the capability to conduct a local wage survey. After the closure of Fort Monmouth, only 12 employees at Naval Weapons Station Earle (NWS Earle) will remain in the wage area. DOD recommended that OPM abolish the Monmouth NAF FWS wage area and redefine Monmouth County to the Burlington, NJ, NAF wage area.

Since Monmouth County will have continuing NAF employment and does not meet the regulatory criteria under 5 CFR 532.219 to be a separate survey area, it must be an area of application. In defining counties as area of application counties, OPM considers the following criteria:

- Proximity of largest facilities activity in each county;
- Transportation facilities and commuting patterns; and
- Similarities of the counties in: overall population; private employment in major industry categories; and kinds and sizes of private industrial establishments.

In selecting a wage area to which Monmouth County should be redefined, proximity favors the Burlington NAF wage area. Distance was measured from NWS Earle because after the closure of Fort Monmouth, it will be the only installation remaining in Monmouth County with NAF FWS employees. The transportation facilities and commuting patterns criteria do not favor one wage area more than another. Monmouth County resembles the Burlington survey area in both the overall population and employment criteria and in the kinds and sizes of private industrial establishments criterion. In addition, Monmouth County is adjacent to the Burlington survey area. Based on the application of the regulatory criteria, OPM has determined that Monmouth County should be redefined as an area of application to the Burlington NAF wage area.

The proposed Burlington NAF wage area will consist of one survey county, Burlington County, NJ, and six areas of application counties: New Castle County, DE, and Atlantic, Cape May, Monmouth, Ocean, and Salem Counties, NJ. FWS employees remaining in the Monmouth wage area will be transferred to the Burlington wage area schedule on the first day of the first applicable pay period beginning on or after October 15, 2011. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and recommended these changes by consensus.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists to waive the general notice of proposed rulemaking. Also pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. This notice is being waived and the regulation is being made effective in less than 30 days because the imminent closure of Fort Monmouth will leave the Monmouth wage area without an activity having the capability to conduct a local wage survey and the remaining NAF FWS employees in Monmouth County must be transferred to a continuing wage area as soon as possible in order to prevent a gap in coverage.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys

■ 2. Appendix B to subpart B is amended by removing, under the State of New Jersey, ''Monmouth.''

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

■ 3. Appendix D to subpart B is amended for the State of New Jersey by removing the wage area listing for Monmouth, New Jersey, and revising the wage area listing for Burlington, New Jersey, to read as follows:

* * * * *

NEW JERSEY
Burlington
Survey Area

New Jersey:
Burlington

Area of application. Survey area plus:

Delaware:
New Castle
New Jersey:
Atlantic
Cape May
Monmouth
Ocean
Salem

* * * * *

[FR Doc. 2011–21776 Filed 8–24–11; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0907; Directorate Identifier 2011–NM–146–AD; Amendment 39–16790; AD 2011–18–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There has been one reported case of an aft equipment bay fire occurring due to arcing of chafed integrated drive generator (IDG) power cables. Additionally, the hydraulic line support brackets located at the fuselage station (FS) 672 have been found broken in service on several aeroplanes. A broken hydraulic line support bracket at FS 672 could result in inadequate clearance between the IDG power cables and hydraulic lines, potentially resulting in chafing of the IDG power cables. Chafed IDG power cables can generate high energy arcing, which can result in an uncontrolled fire in the aft equipment bay.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective September 9, 2011.

We must receive comments on this AD by October 11, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–18, dated July 7, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

There has been one reported case of an aft equipment bay fire occurring due to arcing of chafed integrated drive generator (IDG) power cables. Additionally, the hydraulic line support brackets located at the fuselage station (FS) 672 have been found broken in service on several aeroplanes. A broken hydraulic line support bracket at FS 672 could result in inadequate clearance between the IDG power cables and hydraulic lines, potentially resulting in chafing of the IDG power cables. Chafed IDG power cables can generate high energy arcing, which can result in an uncontrolled fire in the aft equipment bay.

This [TCCA] directive mandates the detailed visual inspection [for chafing and damage] and, if required, rectification of the IDG power cables and hydraulic line support bracket.

You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this

AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because chafed IDG power cables can generate high energy arcing, which can result in an uncontrolled fire in the aft equipment bay. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0907; Directorate Identifier 2011–NM–146–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–18–08 Bombardier, Inc.: Amendment 39–16790. Docket No. FAA–2011–0907; Directorate Identifier 2011–NM–146–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

There has been one reported case of an aft equipment bay fire occurring due to arcing of chafed integrated drive generator (IDG) power cables. Additionally, the hydraulic line support brackets located at the fuselage station (FS) 672 have been found broken in service on several aeroplanes. A broken hydraulic line support bracket at FS 672 could result in inadequate clearance between the IDG power cables and hydraulic lines, potentially resulting in chafing of the IDG power cables. Chafed IDG power cables can generate high energy arcing, which can result in an uncontrolled fire in the aft equipment bay.

* * * * *

Compliance

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

Actions

(g) Within 45 days after the effective date of this AD, do a detailed inspection for chafed or damaged IDG power cables from fuselage station FS652 to FS672, between stringers 8R and 10R, and for cracked or broken hydraulic line support brackets at FS672.

(1) If chafing or damage is found on any IDG power cable, before further flight, replace the IDG power cable using a method approved by either the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(2) If any cracking or breaking is found on any hydraulic line support bracket at FS672, before further flight, replace the hydraulic line support bracket using a method approved by either the Manager, New York ACO, ANE–170, FAA, or TCCA (or its delegated agent).

Reporting

(h) Submit a report of the findings of the inspection required by paragraph (g) of this

AD to Bombardier Regional Aircraft Customer Response Center, 13100 Boulevard Henri-Fabre, Mirabel, Quebec, Canada J7N 3C6; telephone: 1–514–855–8500; fax: 1–514–855–8501; e-mail: *thd.crj@aero.bombardier.com,* at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. The report must include any finding of chafing of the IDG power cable or broken hydraulic line support bracket, the airplane serial number, and the number of landings and flight hours on the airplane.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2011–18, dated July 7, 2011, for related information.

Material Incorporated by Reference

(k) None.

Issued in Renton, Washington, on August 12, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–21619 Filed 8–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0439; Airspace Docket No. 11–ANM–10]

Amendment of Class D and Class E Airspace and Establishment of Class E Airspace; Casper, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E airspace at Casper, Natrona County International Airport, Casper, WY, by adjusting the geographic coordinates of the airport. This action also establishes Class E En Route Domestic airspace at the airport to improve the safety and management of IFR operations.

DATES: Effective date, 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June 21, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Casper, WY (76 FR 36017). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in paragraphs 5000, 6002, 6004, 6005 and 6006, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class D airspace, Class E surface airspace, Class E airspace designated as an extension, and Class E airspace extending upward from 700/1,200 feet above the surface, by adjusting the geographic coordinates of Casper, Natrona County International Airport to be in concert with the FAA's aeronautical database. Also, this action establishes Class E en route domestic airspace extending upward from 1,200 feet above the surface to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to the airport. This enhances the safety and management of IFR operations at the airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of

airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Casper, Natrona County International Airport, Casper, WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ANM WY D Casper, WY [Amended]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)

That airspace extending upward from the surface to and including 7,800 feet MSL within a 4.3-mile radius of Natrona County International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WY E2 Casper, WY [Amended]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)

Within a 4.3-mile radius of Natrona County International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace designated as an extension to a Class D surface area.

* * * * *

ANM WY E4 Casper, WY [Amended]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)
Muddy Mountain VORTAC
(Lat. 43°05′27″ N., long. 106°16′37″ W.)
Johno LOM
(Lat. 42°54′26″ N., long. 106°34′12″ W.)

That airspace extending upward from the surface within 4.3 miles each side of the Muddy Mountain VORTAC 216° radial extending from the VORTAC to 29 miles southwest of the VORTAC, and within 2.7 miles each side of the ILS localizer west course extending from .9 miles east to 9 miles west of the Johno LOM. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Casper, WY [Amended]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)
Muddy Mountain VORTAC
(Lat. 43°05′27″ N., long. 106°16′37″ W.)
Casper ASR
(Lat. 42°55′16″ N., long. 106°27′15″ W.)

That airspace extending upward from 700 feet above the surface within a 23.5-mile radius of the Casper ASR; that airspace extending upward from 1,200 feet above the surface within the 37.5-mile radius of the Casper ASR, and within an area extending from the 37.5-mile radius to the 36.6-mile radius of the Muddy Mountain VORTAC, bounded on the north by the Muddy Mountain VORTAC 060° radial and on the south by the Muddy Mountain VORTAC 111° radial; that airspace extending upward from 11,500 feet MSL extending from the 37.5-mile radius to the 52.2-mile radius of the Muddy Mountain VORTAC, bounded on the east by the west edge of V–19 and on the south by the north edge of V–298.

Paragraph 6006 En Route Domestic Airspace Areas

* * * * *

ANM WY E6 Casper, WY [New]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)

That airspace extending upward from 1,200 feet above the surface within a 85-mile radius of Natrona County International Airport; excluding existing controlled airspace 7,100 feet MSL and above.

Issued in Seattle, Washington, on August 15, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–21663 Filed 8–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0536; Airspace Docket No. 11–ANM–13]

Amendment of Class E Airspace; Shelby, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Shelby, MT, to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Shelby Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June 17, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify controlled airspace at Shelby, MT (76 FR 35362). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface, at Shelby Airport, to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it creates additional controlled airspace at Shelby Airport, Shelby, MT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Shelby, MT [Modified]

Shelby Airport, MT

(Lat. 48°32′26″ N., long. 111°52′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Shelby Airport, and within 2.7 miles each side of the 043° bearing from Shelby Airport extending from the 6.7-mile radius to 7.4 miles northeast of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 48°50′00″ N., long. 111°45′00″ W.; to lat. 48°49′00″ N., long. 111°22′00″ W.; to lat. 48°38′00″ N., long. 111°17′00″ W.; to lat. 48°21′00″ N., long. 111°36′00″ W.; to lat. 48°18′00″ N., long. 112°01′00″ W.; to lat. 48°28′00″ N., long. 112°12′00″ W.; to lat. 48°38′00″ N., long. 112°11′00″ W.; to lat. 48°38′00″ N., long. 112°03′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on August 15, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–21648 Filed 8–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

[Docket No. FDA–2011–N–0003]

New Animal Drugs; Ampicillin Trihydrate, Bacitracin Methylene Disalicylate, Flunixin, Gonadotropin Releasing Factor Analog-Diphtheria Toxoid Conjugate, Methylprednisolone, and Sulfamethazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correcting amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect revised human food safety warnings on dosage form new animal drug product labeling that have not been codified. The regulations are also being amended to correct the wording of certain other conditions of use, to correct minor errors, and to revise some sections to reflect a current format. These actions are being taken to comply with the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and to improve the accuracy and readability of the regulations.

DATES: This rule is effective August 25, 2011.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, e-mail: *george.haibel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA has found that the animal drug regulations do not reflect certain human food safety warnings that have been updated on labeling of various dosage form new animal drug products. At this time, the regulations are being amended to reflect approved labeling. The regulations are also being amended to correct the wording of certain other conditions of use and to correct minor errors. As the opportunity has presented itself, some sections have been revised to a current format. These actions are being taken to comply with the FD&C Act and to improve the accuracy and readability of the regulations.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Parts 520 and 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 520.154a, revise the section heading and paragraphs (d)(1)(i), (d)(2)(i), (d)(2)(ii), (d)(2)(ii)(A), and (d)(4)(i) to read as follows:

§ 520.154a Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(1) * * *

(i) *Amount.* 400 milligrams (mg) per gallon (gal) in drinking water.

* * * * *

(2) * * *

(i) *Amount.* 100 mg per gal in drinking water.

* * * * *

(ii) *Amount.* 200 to 400 mg per gal in drinking water. Administer continuously 5 to 7 days or as long as clinical signs persist, then reduce to prevention levels (100 mg/gal).

(A) *Indications for use.* Treatment of necrotic enteritis caused by *C. perfringens* susceptible to bacitracin methylene disalicylate.

* * * * *

(4) * * *

(i) *Amount.* 400 mg per gal in drinking water.

* * * * *

■ 3. Revise § 520.970 to read as follows:

§ 520.970 Flunixin.

(a) *Specifications.* (1) Each 10-gram (g) packet of granules contains flunixin meglumine equivalent to 250 milligrams (mg) of flunixin.

(2) Each 30-g syringe of paste contains flunixin meglumine equivalent to 1,500 mg of flunixin.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* 0.5 mg of flunixin per pound of body weight per day.

(2) *Indications for use.* For alleviation of inflammation and pain associated with musculoskeletal disorders.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.970a [Removed]

■ 4. Remove § 520.970a.

§ 520.970b [Removed]

■ 5. Remove § 520.970b.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 6. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 7. In § 522.90b, revise paragraph (d)(2)(iii) to read as follows:

§ 522.90b Ampicillin trihydrate.

* * * * *

(d) * * *

(2) * * *

(iii) *Limitations.* Do not treat cattle for more than 7 days. Milk from treated cows must not be used for food during treatment and for 48 hours (4 milkings) after the last treatment. Cattle must not be slaughtered for food during treatment and for 144 hours (6 days) after the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 8. In § 522.1083, revise the section heading and paragraph (a) to read as follows:

§ 522.1083 Gonadotropin releasing factor analog-diphtheria toxoid conjugate.

(a) *Specifications.* Each milliliter of solution contains 0.2 milligrams (mg) gonadotropin releasing factor analog-diphtheria toxoid conjugate.

* * * * *

■ 9. In § 522.1410, revise the section heading, remove and reserve paragraph (c), and revise paragraphs (a) and (d) to read as follows:

§ 522.1410 Methylprednisolone.

(a) *Specifications.* Each milliliter of suspension contains 20 or 40 milligrams (mg) of methylprednisolone acetate.

(b) * * *

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Administer 2 to 40 mg (up to 120 mg in extremely large breeds or dogs with severe involvement) by intramuscular injection or up to 20 mg by intrasynovial injection.

(ii) *Indications for use.* For treatment of inflammation and related disorders; treatment of allergic and dermatologic disorders; and as supportive therapy to antibacterial treatment of severe infections.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* Administer 10 to 20 mg by intramuscular injection.

(ii) *Indications for use.* For treatment of inflammation and related disorders; treatment of allergic and dermatologic disorders; and as supportive therapy to antibacterial treatment of severe infections.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) *Horses*—(i) *Amount.* Administer 200 mg by intramuscular injection or 40 to 240 mg by intrasynovial injection.

(ii) *Indications for use.* For treatment of inflammation and related disorders.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 10. In § 522.2260, revise paragraphs (a), (d)(1), and (d)(3) to read as follows:

§ 522.2260 Sulfamethazine.

(a) *Specifications.* Each milliliter (mL) of solution contains 250 milligrams (mg) sulfamethazine sodium.

* * * * *

(d) * * *

(1) *Amount.* Initially administer 20 mL for each 50 pounds (lb) of body weight (100 mg/lb) by intravenous injection, followed by 20 mL per 100 lb of body weight (50 mg/lb) by intravenous injection, daily thereafter. Treatment should not exceed a total of 5 consecutive days.

* * * * *

(3) *Limitations.* Withdraw medication from cattle 10 days prior to slaughter. Do not use in female dairy cattle 20 months of age or older. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: August 18, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–21721 Filed 8–24–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0755]

RIN 1625–AA00

Safety Zone; ISAF Nations Cup Grand Final Fireworks Display, Sheboygan, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Lake Michigan in Sheboygan, Wisconsin. This zone is intended to restrict vessels from a portion of Sheboygan Harbor during a fireworks display on September 13, 2011. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with this fireworks display.

DATES: This rule is effective from 7:45 until 8:45 p.m. on September 13, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0755 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0755 in the Docket ID box, pressing Enter, and then clicking ''search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary

rule, contact or e-mail BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Adam.D.Kraft@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Notice of this fireworks display was not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Captain of the Port, Sector Lake Michigan, from protecting the public and vessels from the hazards associated with this maritime display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for the 30-day notice period to run would be impracticable and contrary to the public interest.

Background and Purpose

The ISAF Nations Cup Grand Final fireworks are a City permitted fireworks display that occurs over Sheboygan's Harbor in Sheboygan, Wisconsin. The fireworks for this event will be launched from 8 to 8:30 p.m. on September 13, 2011. The Captain of the Port, Sector Lake Michigan has determined that fireworks launched proximate to watercraft pose a significant risk to public safety and property. Such hazards include premature detonations, dangerous detonations, dangerous projectiles, and falling or burning debris.

Discussion of Rule

Because of the aforesaid hazards, the Captain of the Port, Sector Lake Michigan, has determined that a temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the fireworks display. Accordingly, this temporary safety zone will encompass all waters of Lake Michigan and Sheboygan Harbor in the vicinity of the south pier in Sheboygan, Wisconsin within a 500 foot radius from the fireworks launch site located on land in position 43°44′55″ N, 087°41′51″ W. (DATUM: NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This 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.

It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that during the short time this zone will be in effect, it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will 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 or operators of vessels intending to transit or anchor in the affected portion of Lake Michigan and Sheboygan Harbor near the south pier in Sheboygan, Wisconsin, between 7:45 and 8:45 p.m. on September 13, 2011.

This temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: During the display, the zone in this regulation will only be in effect for 60 minutes, and vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Lake Michigan, to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the 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 rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls 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 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34) (g), of the Instruction. This rule involves the establishment of a temporary safety zone which is anticipated to have minimal impact to the environment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 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.T09–0755 to read as follows:

§ 165.T09–0755 Safety Zone; ISAF Nations Cup Grand Final Fireworks Display, Sheboygan, Wisconsin.

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Michigan and Sheboygan Harbor, in the vicinity of the south pier in Sheboygan Wisconsin, within a 500 foot radius from the fireworks launch site located on land in position 43°44′55″ N, 087°41′51″ W.

(b) *Effective and Enforcement period.* This rule will be effective and enforced from 7:45 to 8:45 p.m. on September 13, 2011.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

(3) The ''designated representative'' of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The designated representative of the Captain of the Port, Sector Lake Michigan, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her designated representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector

Lake Michigan, or his or her designated representative.

Dated: August 10, 2011.

M.W. Sibley,

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

[FR Doc. 2011–21699 Filed 8–24–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0279]

RIN 1625–AA00

Safety Zone; TriMet Bridge Project, Willamette River; Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The U.S. Coast Guard will establish a safety zone during the construction of the TriMet Bridge on the Willamette River, in Portland, OR. This action is necessary to ensure the safety of recreational vessels and commercial vessels transiting in close proximity to cranes and overhead work associated with this construction project. During the enforcement period, all vessels will be required to transit through the area at a no wake speed and at a safe distance from the work being conducted.

DATES: This rule is effective in the CFR on August 25, 2011 through 11:59 p.m. on September 30, 2014. This rule is effective with actual notice for purposes of enforcement as of 12:01 a.m. on July 1, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0279 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0279 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail BM1 Silvestre G. Suga, waterways Management Division, Marine Safety Unit Portland, Oregon, Coast Guard; telephone 503–240–9319, e-mail *Silvestre.G.Suga@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 4, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: TriMet Bridge Project, Willamette River; Portland, OR in the **Federal Register** (76 FR 86). We received no comments on the proposed rule. The Coast Guard did not receive a request for a public hearing.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect the public; therefore, a 30-day delayed effective date is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting the public during the construction of the TriMet Bridge on the Willamette River, in Portland, OR.

Basis and Purpose

TriMet and their contractor, Kiewit Infrastructure West, began construction of the new Portland-Milwaukie Light Rail Bridge on July 1, 2011 (with in-water mobilization beginning in June). The construction of the bridge will last from July 2011 through October 2014. The project includes the construction of four piers, two on land and two piers in the water requiring cofferdams. Trestles will be constructed to complete sections of the project as well as the use of crane barges that can be affected by vessel wakes. To ensure the safety of construction crews on the barges, trestles, and cranes involved in this project TriMet has requested that the Coast Guard place a 1,000 foot safety zone around the entire project. This safety zone will include a 500 foot no wake zone upriver and downriver of the project. It will also include two exclusionary zones that will require vessels passing through the area to remain a distance of 100 feet in all directions away from the work trestles and 140 feet in all directions away from the cranes. This will ensure that the vessels passing through the designated areas will not be in a dangerous position under cranes or too close to the trestles.

Background

The Coast Guard did not consider any other options for this construction site. The safety hazards in the immediate area around this construction required actions to be taken to ensure that vessels did not get within 100 feet of certain areas of the equipment on the construction site.

Discussion of Comments and Changes

There were no comments received on the notice of proposed rulemaking and there have been no changes made to the proposed rule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This 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. The Coast Guard has made this determination based on the fact that this rule does not stop all river traffic. The rule will only limit entry into certain areas of the river for safety; the other section of the river will be open for transits at a no wake speed. Users of the river should not be adversely affected by the closures and delays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: The owners or operators of vessels wishing to transit the safety zone established by this rule. The rule will not have a significant economic impact on a substantial number of small entities because parts of the area will still be accessible to vessels and the vessels will still be able to transit through the safety zone area with permission. The Coast Guard did not receive any comments on this rule from small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could 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 rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls 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 rule under that Order and have determined that it does not have implications for federalism. The Coast Guard did not receive any comments on this rule.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Coast Guard did not receive any comments on this rule.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The Coast Guard did not receive any comments on this rule.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The 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. The Coast Guard did not receive any comments on this rule.

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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. The Coast Guard did not receive any comments on this rule.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the enforcement of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1338 Safety Zone; TriMet Bridge Project, Willamette River; Portland, OR

(a) Location. The following area is a safety zone: All waters of the Willamette River encompassed within the following two lines: line one starting at latitude 45°30′26.21″ N longitude 122°39′57.53″

W on the east bank then across the Willamette River to latitude 45°30′20.77″ N longitude 122°40′13.04″ W on the west bank; line two starting at latitude 45°30′18.14″ N longitude 122°39′51.77″ W on the east bank then across the Willamette River to latitude 45°30′12.02″ N longitude 122°40′08.44″ W on the west bank.

Geographically this area is all the waters of the Willamette River within an area created by a line beginning on the east bank of the Willamette River at the OMSI facility extending across the river to the west bank, following the shoreline approximately 1000 feet up river to the Zidell waterfront area, extending across the river to the property line for Caruthers Landing, then following the shoreline approximately 1000 feet downriver to the starting point.

(b) Regulation. In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter or remain in the safety zone without the permission of the Captain of the Port or Designated Representative. The Captain of the Port may be assisted by other federal, state, or local agencies with the enforcement of the safety zone.

(c) Authorization. All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated Representative by contacting the on-scene patrol craft. Vessel operators granted permission to enter the zone may be escorted by the on-scene patrol craft until they are outside of the safety zone.

(d) Enforcement Period. The safety zone detailed in paragraph (a) of this section will be in effect from 12:01 a.m. on July 1, 2011 through 11:59 p.m. on September 30, 2014.

Dated: July 26, 2011.

B.C. Jones,

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

[FR Doc. 2011–21700 Filed 8–24–11; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

Outbound International Mailings of Lithium Batteries

AGENCY: Postal Service™.

ACTION: Final rule with comment period.

SUMMARY: The Postal Service is revising the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) section 135.6, to incorporate new maximum limits for the outbound mailing of lithium batteries. This is consistent with recent amendments to the Universal Postal Union (UPU) Convention.

DATES: *Effective Date:* October 3, 2011. We must receive your comments on or before September 26, 2011.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza, SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments, containing the name and address of the commenter, may be sent to *MailingStandards@usps.gov,* with a subject line of ''International Lithium Batteries.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Rick Klutts at 813–877–0372.

SUPPLEMENTARY INFORMATION: The Postal Service is making this change to be consistent with the amendments to the UPU Convention and regulations as announced in International Bureau Circulars 114 and 115, dated June 14, 2011. The amendments affect UPU Convention Article 15 and Article 16, Article RL 131 of the letter post regulations, and RC 120 of the parcel post regulations regarding the mailing of certain lithium cells and batteries. Additional details about this UPU change can be found at: *http://pe.usps.com/FRN/IB_Circ_114-115.pdf.*

This final rule describes the requirements established for mailpieces containing equipment with lithium metal or lithium-ion batteries in accordance with Packing Instruction 967, Section II, or Packing Instruction 970, Section II, as applicable when mailed internationally or to an APO, FPO or DPO location. These instructions can be found in the current edition of the *Technical Instruction for the Safe Transport of Dangerous Goods by Air* as published by the International Civil Aviation Organization.

This final rule allows limited quantities of lithium batteries typically used in consumer products, including many electronic devices, to be safely transported in the international mailstream.

The Postal Service will also make parallel changes to other USPS publications that make reference to the international mailing of lithium batteries such as *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM®) and Publication 52, *Hazardous, Restricted, and Perishable Mail.*

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR Part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

1 International Mail Services

* * * * *

130 Mailability

* * * * *

135 Mailable Dangerous Goods

* * * * *

[Insert new 135.6 as follows:]

135.6 Batteries.

135.61 General.

Only lithium batteries under 62 and 63 that are properly installed in the equipment they operate may be sent internationally. Lithium batteries packed with equipment and lithium batteries sent separately from equipment are prohibited. Damaged or recalled batteries are prohibited and may not be mailed internationally under any circumstances.

135.62 Primary Lithium (Non-Rechargeable) Cells and Batteries.

Small consumer-type primary lithium cells or batteries (lithium metal or lithium alloy) like those used to power cameras and flashlights are mailable in a single shipment with the following restrictions:

a. The batteries must be installed in the equipment being shipped.

b. Each shipment may contain a maximum of four lithium cells or two lithium batteries.

c. The lithium content must not exceed 1 gram (g) per cell.

d. The total aggregate lithium content must not exceed 2 g per battery.

e. The batteries installed in the equipment must be protected from damage and short circuit.

f. The equipment must be equipped with an effective means of preventing it from being turned on or activated.

g. The equipment must be cushioned to prevent movement or damage and be contained in a strong enough sealed package to prevent crushing of the package or exposure of the contents during normal handling in the mail.

135.63 Secondary Lithium-ion (Rechargeable) Cells and Batteries.

Small consumer-type lithium-ion cells and batteries like those used to power cell phones and laptop computers are mailable in a single shipment with the following restrictions:

a. The batteries must be installed in the equipment being shipped.

b. Each shipment may contain a maximum of four lithium-ion cells or two lithium-ion batteries.

c. The lithium content must not exceed 20 Watt-hour rating (Wh) per cell.

d. The total aggregate lithium content must not exceed 100 Wh per battery.

e. Each battery must bear the ''Watt-hour'' or ''Wh'' marking on the battery to determine if it is within the limits defined in items c and d.

f. The batteries installed in the equipment must be protected from damage and short circuit.

g. The equipment must be equipped with an effective means of preventing it from being turned on or activated.

h. The equipment must be cushioned to prevent movement or damage and be contained in a strong enough sealed package to prevent crushing of the package or exposure of the contents during normal handling in the mail.

* * * * *

We will publish an amendment to 39 CFR Part 20 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–21443 Filed 8–24–11; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 775

National Environmental Policy Act Procedures

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the Postal Service's National Environmental Policy Act (NEPA) compliance procedures to update an obsolete statutory reference.

DATES: *Effective Date:* August 25, 2011.

ADDRESSES: Written communications should be directed to: Environmental Counsel, U.S. Postal Service, 4200 Wake Forest Rd., Raleigh, NC 27668–9000.

FOR FURTHER INFORMATION CONTACT: Gary W. Bigelow, Senior Litigation Counsel, Environmental Law, (919) 501–9439.

SUPPLEMENTARY INFORMATION: Amendment of 39 CFR 775.6(b)(15) is necessary to update a reference to the statutory provision dealing with the administrative procedures for the closing or consolidation of post offices. Formerly, that provision was codified at 39 U.S.C. 404(b), but under section 1010(e) of Public Law 109–435, 120 Stat. 3261, was redesignated as 39 U.S.C. 404(d). This rule updates the reference in § 775.6.

List of Subjects in 39 CFR Part 775

Environmental impact statements.

For the reasons set forth above, the Postal Service amends 39 CFR Part 775 as follows:

PART 775—NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

■ 1. The authority citation for 39 CFR Part 775 continues to read as follows:

Authority: 39 U.S.C. 401; 42 U.S.C. 4321 *et seq.;* 40 CFR 1500.4.

§ 775.6 [Amended]

■ 2. In § 775.6(b)(15), remove ''404(b)'' and insert ''404(d)'' in its place.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–21698 Filed 8–24–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2010–0929; FRL–9456–3]

RIN 2060–AQ80

Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deferring the reporting deadline for data elements that are used by direct emitter reporters as inputs to emission equations under the Mandatory Greenhouse Gas Reporting Rule. The deadline for reporting some of these data elements is deferred to March 31, 2013 and the deadline for reporting others is deferred to March 31, 2015. This final rule does not change any other requirements of the Mandatory Greenhouse Gas Reporting Rule.

DATES: This final rule is effective on September 9, 2011.

ADDRESSES: EPA has established a docket under Docket ID No. EPA–HQ–OAR–2010–0929 for this action. 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.*, 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 either electronically through *http://www.regulations.gov* or in hard copy at EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov*. For technical information and implementation materials, please go to the Greenhouse Gas Reporting Program Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* To submit a question, select Rule Help Center, followed by Contact Us.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this rule will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Greenhouse Gas Reporting Program Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA)

section 307(d). See CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to ''such other actions as the Administrator may determine''). These are final amendments to existing regulations. Entities affected by this final rule are owners or operators of facilities that are direct emitters of greenhouse gases (GHGs) and are required to report under the Mandatory GHG Reporting Rule (40 CFR part 98), which include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources.		Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
	325193	Ethyl alcohol manufacturing facilities.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
Electricity Generation	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Aluminum Production	331312	Primary aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous and aqueous ammonia production facilities.
Cement Production	327310	Portland Cement manufacturing plants.
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid state) device manufacturing facilities.
	334419	LCD unit screens manufacturing facilities.
		MEMS manufacturing facilities.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Fluorinated GHG Production	325120	Industrial gases manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen production facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Production	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Magnesium Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Municipal Solid Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
Nitric Acid Production	325311	Nitric acid production facilities.
Petrochemical Production	32511	Ethylene dichloride production facilities.
	325199	Acrylonitrile, ethylene oxide, methanol production facilities.
	325110	Ethylene production facilities.
	325182	Carbon black production facilities.
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Sulfur Hexafluoride (SF_6) from Electrical Equipment.	221121	Electric bulk power transmission and control facilities.
Titanium Dioxide Production	325188	Titanium dioxide manufacturing facilities.
Underground Coal Mines	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Industrial Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
Wastewater Treatment	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
CO_2 Enhanced Recovery Projects	211	Oil and Gas Extraction Projects using CO_2 Enhanced Recovery.
Geologic Sequestration Sites		CO_2 Geologic sequestration projects.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities and suppliers likely to be affected by this action. Table 1 of this preamble lists types of facilities that may be affected by the reporting requirements. Other types of facilities and suppliers than those listed in the table may also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in the subparts. If you have questions regarding the applicability of this action to a particular facility or supplier, consult the person listed in the preceding **FOR FURTHER GENERAL INFORMATION CONTACT** section.

What is the effective date? EPA is making this final rule effective on September 9, 2011. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under CAA section 307(d)(1), which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with APA section 553(d) in making this rule effective on September 9, 2011.

APA section 553(d)(1) provides an exception to the 30-day publication requirement for any rule that grants or recognizes an exemption or relieves a restriction. This final rule provides relief to the current requirement to report inputs to emission equations by September 30, 2011 for 34 subparts of 40 CFR part 98 or March 31, 2012 for eight subparts of 40 CFR part 98 by deferring these deadlines to either March 31, 2013 or March 31, 2015, depending on the data elements. Because this action defers the regulatory deadline for a reporting requirement, a shorter effective date is consistent with this exception. Further, the purpose of the 30-day waiting period prescribed in APA section 553(d) is to give affected parties a reasonable time period to adjust their behavior and prepare before the final rule takes effect. Because this final rule defers a reporting deadline, it requires little preparation or behavior adjustment. Where, as here, the final rule will be signed and made available on the EPA Web site more than 15 days before the effective date, that purpose is still met.

Accordingly, EPA finds it appropriate, consistent with APA section 553(d)(1), to make this rule effective on September 9, 2011, even though this results in an effective date fewer than 30 days from the date of publication in the **Federal Register**.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by October 24, 2011. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. CAA section 307(d)(7)(B) also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER GENERAL INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

APA Administrative Procedure Act.
CAA Clean Air Act.
CH_4 methane.

CFR Code of Federal Regulations.
CBI confidential business information.
CO_2 carbon dioxide.
EPA U.S. Environmental Protection Agency.
FTC Federal Trade Commission.
FR **Federal Register**.
GHG greenhouse gas.
HCFC–22 chlorodifluoromethane.
HFC–23 trifluoromethane (or CHF_3).
ICR Information Collection Request.
LCD liquid crystal display.
MEMS microelectricomechanical system.
N_2O nitrous oxide.
NAICS North American Industry Classification System.
NTTAA National Technology Transfer and Advancement Act of 1995.
OMB Office of Management and Budget.
RFA Regulatory Flexibility Act.
SF_6 sulfur hexafluoride.
UMRA Unfunded Mandates Reform Act of 1995.
U.S. United States.
WWW Worldwide Web.

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I. Background

A. How is this preamble organized?

The first section of this preamble contains basic background information about the origin of these rule amendments. The second section of this preamble summarizes major changes since proposal, including changes to the length of the deferral and to the list of data elements categorized as inputs to emission equations. The third section provides an overview of EPA's response to significant comments. Finally, the fourth section of the preamble discusses the various statutory and executive order requirements applicable to this rulemaking.

B. Background on This Action

On October 30, 2009, EPA published the Mandatory Greenhouse Gas Reporting Rule for requiring data reporting regarding greenhouse gas emissions from a broad range of industry sectors (74 FR 56260). Under 40 CFR part 98 and its subsequent amendments (hereinafter referred to as ''Part 98''), EPA will require reporting of data from certain facilities and suppliers above specified thresholds. The data to be reported include information on GHG emissions and GHGs supplied, including information necessary to characterize, quantify, and verify the GHG emissions and GHGs supplied data. In the preamble to Part 98, we stated, ''Through a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section 114(c)] will not be afforded the protections of CBI. As part of that exercise, in response to requests provided in comments, we may identify classes of information that are not emissions data, and are CBI'' (74 FR 56287, October 30, 2009).

On July 7, 2010, EPA proposed confidentiality determinations for Part 98 data elements and proposed amending EPA's regulation for handling confidential business information to add specific procedures for the treatment of Part 98 data (75 FR 39094; hereinafter referred to as the ''July 7, 2010 CBI proposal''). These proposed amendments to 40 CFR part 2 would allow EPA to release Part 98 data that are determined to be emission data or non-CBI upon finalizing the confidentiality status of these data. The amendments also set forth procedures for treatment of information in Part 98 determined to be CBI. The proposed procedures are similar to or consistent with the existing 40 CFR part 2 procedures.

The July 7, 2010 CBI proposal proposed confidentiality statuses for the data elements for subparts that were included in the 2009 final Part 98 rule (see 74 FR 56260, October 30, 2009); four subparts finalized in July 2010 (see 75 FR 39736, July 12, 2010); and seven new subparts that had been proposed but not yet finalized as of July 2010 (see 75 FR 18576, 75 FR 18608, and 75 FR 18652, April 12, 2010). The July 7, 2010 CBI proposal also covered proposed changes to the reporting requirements for some of the 2009 final Part 98 subparts. These changes were proposed in two separate rulemakings (see 75 FR 18455, April, 12, 2010; and 75 FR 33950, June 15, 2010).

On August 11, 2010, EPA published a proposed amendment to Part 98 to change the description of some reported data elements and require reporting of some new data elements (75 FR 48744; hereinafter referred to as the ''August 11, 2010 revisions proposal''). EPA concurrently issued a supplemental CBI proposal that proposed confidentiality determinations for the new and revised data elements included in the August 11, 2010 revisions proposal (75 FR 43889, July 27, 2010; hereinafter referred to as the ''July 27, 2010 supplemental CBI proposal'').

As described in detail in the CBI proposals identified above, EPA grouped Part 98 data into 22 data categories (11 direct emitter data categories and 11 supplier data categories), with each of the categories containing data elements that are similar in type or characteristics. EPA then proposed confidentiality determinations for each category, with a few exceptions that are not relevant to today's action. Consistent with EPA's long-standing interpretation, EPA proposed that data elements in the inputs to emission equations data category meet the definition of emission data under 40 CFR 2.301(a)(2)(i) and therefore, under CAA section 114(c), could not be held as confidential once they were reported to EPA.

EPA received numerous public comments on the July 7, 2010 CBI proposal and the July 27, 2010 supplemental CBI proposal. EPA received comments that raised concerns regarding the public availability of data in the inputs to emission equations category. EPA determined that these concerns warranted an in-depth evaluation of the potential impact from the release of inputs to emission equations, as well as collection and review of additional information, that could not be completed before the March 31, 2011 reporting deadline.

In the proposal to this final rulemaking (75 FR 81350, December 27, 2010, hereinafter referred to as the ''December 27, 2010 deferral proposal''), EPA proposed to defer the reporting of inputs to equations until March 31, 2014, to afford additional time to complete this evaluation and take appropriate final actions regarding inputs to equations before these data elements are reported to EPA and potentially become subject to release. The deferral proposal concerned only reporting of inputs to emission

equations for direct emitters and did not affect any other requirements of Part 98.

Concurrent with that notice, EPA promulgated an interim final rule (75 FR 81338, December 27, 2010) that deferred the initial March 31, 2011 reporting date for inputs to emission equations to August 31, 2011, to give EPA time to promulgate this deferral through notice and comment. (See Section III of the preamble to the interim final rule for a detailed rationale.)

EPA concurrently published a call for information, entitled ''Information on Inputs to Emission Equations under the Mandatory Reporting of Greenhouse Gases Rule'' (75 FR 81366, December 27, 2010; hereinafter referred to as the ''call for information''), to collect additional information to assist EPA with the evaluation of the data elements being deferred. In the call for information, we requested comment on whether each data element used as an input to an emission equation for direct emitters was likely to cause substantial competitive harm if made publicly available; whether and where it was already publicly available; and, if public availability of a given input was likely to cause substantial competitive harm, suggestions of alternate calculation methodologies and/or verification approaches.

A later **Federal Register** notice extended the deadline for reporting of all 2010 reporting year data until September 30, 2011 (76 FR 14812, March 18, 2011). This included those data whose reporting deadline had previously been deferred until August 31, 2011, in the interim final rule.

Based on the July 7, 2010 CBI proposal, July 27 supplemental CBI proposal, and comments thereto, EPA promulgated confidentiality determinations for certain data elements required to be reported under Part 98 and finalized amendments to the Special Rules Governing Certain Information Obtained Under the Clean Air Act, which authorizes EPA to release or withhold as confidential reported data according to the confidentiality determinations for such data without taking further procedural steps (76 FR 30782, May 26, 2011, hereinafter referred to as the ''May 26, 2011 Final CBI Rule''). That notice addressed reporting of data elements in 34 subparts that were determined not to be inputs to emission equations and therefore were not proposed to have their reporting deadline deferred. That rule did not make confidentiality determinations for eight subparts for which reporting requirements were finalized after publication of the July 7, 2010 CBI proposal and July 27, 2010 supplemental CBI proposal. As explained in Section II.A.3 of the preamble to the May 26, 2011 Final CBI Rule, EPA will address the confidentiality of the data elements in those eight subparts in a separate action. That rule also did not address data elements used as inputs to emission equations, which are addressed in this final rule.

II. Summary of Major Changes Since Proposal

This section provides a summary of major changes since proposal, including the date to which the reporting of inputs to equations is deferred as well as the list of data elements categorized as inputs to emission equations.

A. Changes to the Date for Reporting Inputs to Equations

In the December 27, 2010 deferral proposal, EPA proposed to defer reporting of inputs to equations until March 31, 2014. For the reasons stated below, in this final rule, EPA is deferring the reporting deadline for some inputs to equations to March 31, 2013 and the others to March 31, 2015. For a list of inputs to equations to be reported under each deadline, please see Tables A–6 and A–7 in the regulatory text at the end of this notice.

In the preamble to the proposed rule, EPA explained that it proposed to defer reporting of inputs to emission equations to allow EPA adequate time to fully evaluate whether and the extent to which potential competitive harm may result if any of the inputs to equations data elements were reported and made publicly available, and whether emissions can be calculated or verified using additional methodologies, consistent with the transparency and accuracy goals of Part 98 (75 FR 81350, 81355). EPA therefore proposed to defer the reporting of inputs to equations until March 31, 2014, with the goal of completing its evaluations and other necessary actions in advance of that date.

As mentioned in the Background section (Section I.B of this preamble), concurrent with the December 27, 2010 deferral proposal, EPA issued a call for information to obtain additional information that would assist EPA in its evaluations. In the call for information, EPA requested specific information identifying how public availability of any input to an emission equation would cause harm to any reporter, and which data elements that are inputs to emission equations are already publicly available or otherwise not sensitive for any reporter. EPA also requested suggestions of additional calculation methodologies and verification approaches for specific subparts that would achieve the transparency and accuracy goals of Part 98 without requiring reporting of data elements that commenters consider likely to cause substantial competitive harm.

Since the December 27, 2010 deferral proposal, EPA has been heavily engaged in the evaluations described above. For a detailed description of the activities EPA is undertaking to evaluate each input to equations, please see a memorandum to the docket, ''Process for Evaluating and Potentially Amending Part 98 Inputs to Emission Equations.'' For the reasons stated below, the evaluations have proven to be more complex and time-consuming than EPA had anticipated. Because EPA had not received as much information as it had anticipated through the call for information, EPA is spending more time collecting information and identifying potential impacts and solutions. Furthermore, based on the comments received in response to the deferral proposal and the call for information, the number of data elements that would require a more in-depth evaluation is much larger than EPA had anticipated at the time of the deferral proposal.

As noted above, EPA proposed to defer the reporting of inputs to equations to March 31, 2014, with the goal of completing its evaluations and other necessary actions by that date. Despite the difficulties described above, EPA anticipates that it can complete its evaluations for some inputs to equations by March 31, 2013. Accordingly, in this final rule, EPA is requiring reporting of these inputs to equations by March 31, 2013, a year sooner than proposed. These data elements are those for which EPA either is further along or able to proceed more quickly in the evaluation processes (as outlined in the docket memorandum). However, for the remaining inputs, due to the difficulties described above, EPA either is less far along or the evaluation processes are more time-consuming. For these inputs to equations, EPA is deferring the reporting deadline to March 31, 2015. As we explained in the December 27, 2010 deferral proposal, deferral of the inputs reporting deadline to either date does not change any other requirements of Part 98, including the requirement that these data elements be retained as records in a form that is suitable for expeditious inspection and review (required for all Part 98 records by 40 CFR 98.3(g)).

The results of our decision regarding the reporting deadline for each input are provided in Tables A–6 and A–7, and in the Response to Comments document in

the docket titled, ''Response to Comments on the Greenhouse Gas Reporting Rule—Deferral Notice and Call For Information.''

B. Changes to the List of Deferred Data Elements

In this notice, we are including in the list of deferred data elements 16 data elements that were not identified as inputs to equations in the December 27, 2010 deferral proposal. We are also removing 24 data elements that were either incorrectly identified as inputs to equations in the December 27, 2010 deferral proposal or are no longer required to be reported. In addition, we are clarifying the deferral regarding three data elements that are used as inputs to emission equations in some circumstances but not in others.

EPA received numerous public comments on the December 27, 2010 deferral proposal, including some comments contending that additional data elements besides those listed in the proposed regulatory text are inputs to emission equations. We agree with commenters that six data elements that were not included in the December 27, 2010 deferral proposal are actually inputs to emission equations and, therefore, should be deferred. These data elements are the following:

- Subpart Y: Quantity of unstabilized crude oil received during the calendar year (40 CFR 98.256(o)(6)).[1]
- Subpart Y: Average pressure differential (40 CFR 98.256(o)(6)).[1]
- Subpart Y: Mole fraction of methane (CH_4) in vent gas from the unstabilized crude oil storage tank (40 CFR 98.256(o)(6)).[1]
- Subpart Y: Tank-specific methane composition data (40 CFR 98.256(o)(7)).[1]
- Subpart Y: Gas generation rate data (40 CFR 98.256(o)(7)).[1]
- Subpart TT: Surface area (in square meters) at the start of the reporting year for the landfill sections that contain waste and that are associated with the selected cover type (for facilities using a landfill gas collection system) (40 CFR 98.466(e)(2)).[1]

EPA agrees with the comments that the six data elements described above are inputs to emission equations. In light of these comments, EPA reviewed the data elements lists to assure proper categorization and identified nine additional data elements that are inputs to emission equations, but were not included in the December 27, 2010 deferral proposal. These data elements are the following:

- Subpart I: Fraction of each fluorinated GHG or N_2O destroyed or removed in abatement systems connected to process tools where recipe, process sub-type, or process type j is used (40 CFR 98.96(o)).[2]
- Subpart I: All inputs and results of calculations made accounting for the uptime of abatement systems used during the reporting year, in accordance with Equations I–14 and I–15 of this subpart (40 CFR 98.96(q)(2)).[2]
- Subpart L: Where missing data have been estimated pursuant to 40 CFR 98.125 report, estimate of the missing data (40 CFR 98.126(d)).[2]
- Subpart U: Annual carbonate input by carbonate type (40 CFR 98.216(f)(1)).[1]
- Subpart U: Annual carbonate output by carbonate type (40 CFR 98.216(f)(2)).[1]
- Subpart W: For gas well completions and workovers without hydraulic fracturing: total count of completions in calendar year (40 CFR 98.236(c)(6)(ii)(A)).[2]
- Subpart W: Count of compressors (40 CFR 98.236(c)(14)(v)(A)).[2]
- Subpart TT: Last year the landfill accepted waste (for closed landfills using Equation TT–4) (40 CFR 98.466(a)(3)).[1]
- Subpart TT: Capacity of the landfill in metric tons (for closed landfills using Equation TT–4) (40 CFR 98.466(a)(4)).[1]

In addition, there are 23 data elements that were incorrectly identified in the December 27, 2010 deferral proposal as inputs to emissions equations. For four of these data elements that are in the 34 subparts addressed in the May 26, 2011 Final CBI Rule, EPA assigned them to the appropriate categories and made final determinations regarding their confidentiality status in that rule. Consistent with the Final CBI Rule, EPA is removing those data elements from the deferral list in this final rule. These data elements are:

- Subpart C: Percentage of source operating hours for which substitute data is used for stack gas flow rate (40 CFR 98.36(e)(2)(vi)(C)).
- Subpart C: Percentage of source operating hours for which substitute data is used for stack gas moisture content (40 CFR 98.36(e)(2)(vi)(C)).
- Subpart Y: Average coke burn-off quantity per cycle or measurement period, and average carbon content of coke (40 CFR 98.256(f)(13)).
- Subpart FF: Dates in quarterly reporting period where active ventilation of mining operations is taking place (40 CFR 98.326(l)).

The remaining 19 data elements that were incorrectly identified in the proposed deferral as inputs to emissions equations were in the eight subparts not covered by the May 26, 2011 Final CBI Rule. As explained in Section II.A.3 of the preamble to that rule, EPA will address the confidentiality of the data elements in those eight subparts in a separate action. Consistent with the actions described above, EPA is removing these 19 data elements from the list of inputs to emission equations in this final rule. These data elements are:

- Subpart I: For all fluorinated GHGs and N_2O used at your facility for which you have not calculated emissions using Equations I–6, I–7, I–8, I–9, and I–10, the chemical name of the GHG used, the annual consumption of the gas, and a brief description of its use (40 CFR 98.96(g)).
- Subpart I: Certification that each abatement system has been installed, maintained, and operated in accordance with manufacturers' specifications (40 CFR 98.96(q)(1)).
- Subpart W: Total number of days of gas venting to the atmosphere during backflow for completion (40 CFR 98.236(c)(6)(ii)(C)).
- Subpart W: Number of wellhead separators sending oil to atmospheric tanks (40 CFR 98.236(c)(8)(i)(A)).
- Subpart W: Count of hydrocarbon tanks at well pads (40 CFR 98.236(c)(8)(i)(D)).
- Subpart W: Best estimate of count of stock tanks not at well pads receiving your oil (40 CFR 98.236(c)(8)(i)(E)).
- Subpart W: Count of tanks with emissions control measures, either vapor recovery system or flaring, for tanks at well pads (40 CFR 98.236(c)(8)(i)(G)).
- Subpart W: Best estimate of count of stock tanks assumed to have emissions control measures not at well pads, receiving your oil (40 CFR 98.236(c)(8)(i)(H)).
- Subpart W: Range of concentrations of flash gas, CH_4, and carbon dioxide (CO_2) (40 CFR 98.236(c)(8)(i)(I)).
- Subpart W: Report emissions individually for Calculation Methodology 1 and 2 of § 98.233(j) (40 CFR 98.236(c)(8)(i)(J)).
- Subpart W: Total number of wells sending oil directly to tanks (40 CFR 98.236(c)(8)(ii)(B)).

[1] This data element is listed in one of the 34 Part 98 subparts addressed in the May 26, 2011 Final CBI Rule. Consistent with that rule's treatment of inputs to emission equations, that rule did not assign a confidentiality determination to this data element.

[2] This data element is listed in one of the eight Part 98 subparts that were not addressed in the May 26, 2011 Final CBI Rule but for which confidentiality determinations will be addressed in a separate action; see section II.A.3 of the preamble to the May 26, 2011 Final CBI Rule.

• Subpart W: Total number of wells sending oil to separators off the well pads (40 CFR 98.236(c)(8)(ii)(C)).
• Subpart W: Count of hydrocarbon tanks on wellpads (40 CFR 98.236(c)(8)(ii)(E)).
• Subpart W: Count of hydrocarbon tanks, both on and off well pads assumed to have emissions control measures: either vapor recovery system or flaring of tank vapors (40 CFR 98.236(c)(8)(ii)(F)).
• Subpart W: Number of wells without wellhead separators (40 CFR 98.236(c)(8)(iii)(B)).
• Subpart W: Total volume of oil production in barrels per year (40 CFR 98.236(c)(8)(iii)(C)).
• Subpart W: CH_4 and CO_2 emissions (refer to Equation W–31 of § 98.233) collectively by equipment type (40 CFR 98.236(c)(15)(ii)(C)).
• Subpart W: Report emissions collectively (40 CFR 98.236(c)(17)(v)).
• Subpart W: Report annual throughput as determined by engineering estimate based on best available data for each industry segment listed in paragraphs (a)(1) through (a)(8) of this section (40 CFR 98.236(d)).

We also have removed the following data element from the list of deferred inputs to emission equations because it is no longer required to be reported.

• Subpart CC: Annual operating hours for manufacturing lines used to produce soda ash using liquid alkaline feedstock (40 CFR 98.296(b)(10)(vii)).

We also have added clarifications regarding the conditions under which certain data elements are deferred:

• Subpart Y: For 40 CFR 98.256(h)(5), we have clarified that the annual volume of recycled tail gas is deferred only for reporters who use this data element to calculate the recycling correction factor.
• Subpart HH: For 40 CFR 98.346(a), we have clarified that the last year the landfill accepted waste and the capacity of the landfill are deferred only when reported by closed landfills using Equation HH–3 to calculate emissions.

In this final rule, EPA has also deleted two erroneous rule citations from the list of inputs in the December 27, 2010 deferral proposal. These citations are 40 CFR 98.236(c)(14)(iv)(A) and (iv)(B). Though listed in the deferral proposal as reporting requirements for subpart W, these two paragraphs are not in the final subpart W rule published on November 30, 2010 (75 FR 74458).

III. Response to Significant Comments on the Proposed Amendments

This section contains a brief summary of the significant comments and our responses thereto. Other comments were also received. Responses to these comments can be found in ''Response to Comments on the Greenhouse Gas Reporting Rule—Deferral Notice and Call for Information'' in the docket.

Comment: Several commenters supported deferring all data elements used as inputs to emission equations through the proposed date of March 13, 2014. Some commenters specified the source categories and/or data elements for which they support the deferral. These commenters explained that the inputs in these categories would cause competitive harm if made publicly available and described how this would occur. For example, some of these commenters provided information on how release of certain product composition, production and throughput quantities, and raw material data elements could be used by their competitors to gain a competitive advantage and cause harm to the reporter. Some commenters noted that particular inputs are not publicly available and named steps that reporters take to protect these data. Some of these commenters noted that other Federal and State agencies that collect similar information treat the information as confidential.

Other commenters opposed deferring the reporting of any of the Part 98 data elements. Some commenters indicated that many of the data elements proposed for deferral are publicly available in Federal and State permits, State inventories, published studies, or other publicly available sources, or otherwise not likely to cause substantial competitive harm if made publicly available. Additionally, some data elements and subparts did not receive comments, and some received comments that asserted a position without providing evidence.

Response: EPA appreciates the comments in support of deferring the reporting deadline for inputs to equations. As part of the evaluations described in Section II.A of this preamble, EPA will consider the examples of competitive harm, public availability, and other factors that commenters provided for many of the inputs.

EPA disagrees with the comments opposing deferral of any of the inputs. However, as explained in Section II.A of this preamble, EPA is deferring the reporting deadline only until March 31, 2013 for those inputs for which our evaluations are less time-consuming or further along. For the others, the evaluations of which are more complex and time-consuming, EPA is deferring the reporting deadline until March 31, 2015.

Comment: Some commenters contended that the December 27, 2010 deferral proposal was contrary to law and Congressional intent and would subvert the spirit of the reporting mandate.

Response: EPA disagrees with these comments. Title II of the 2008 Consolidated Appropriations Act (H.R. 2764; Pub. L. 110–161) requires EPA to establish ''mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors'' of the U.S. economy through publication of a draft rule within 9 months of the promulgation of the Appropriations Act and a final rule within 18 months, a task EPA accomplished in its promulgation of the Greenhouse Gas Reporting Program under Part 98. Congress left the Agency discretion in determining the specific data to be reported, timing of data reporting, and the methods of data calculation and verification. Today's action affects only the reporting deadline of the data elements identified as inputs to emission equations, which EPA has discretion to establish. During the deferral period, reporters must continue to report GHG emission levels and all other data required under Part 98 that are not identified as inputs to emission equations.

Comment: Some commenters referenced comments submitted by the Federal Trade Commission (FTC) on the July 7, 2010, CBI proposal, stating that public disclosure of specific data elements would create antitrust concerns.

Response: EPA appreciates the comments from the FTC and from commenters that referenced those comments. As explained in the memorandum to the docket describing EPA's process for evaluating the inputs to emission equations, ''Process for Evaluating and Potentially Amending Part 98 Inputs to Emission Equations,'' EPA will take these comments into consideration in determining the likelihood of each input to cause substantial competitive harm if released.

Comment: Several commenters indicated that deferring reporting of inputs to emission equations would interfere with State greenhouse gas reporting programs.

Response: EPA disagrees with these comments. The deferred reporting of inputs to emission equations under EPA's Greenhouse Gas Reporting Program does not affect the ability of States to require facilities to report these data elements.

Comment: Several commenters alleged that deferring the reporting deadline for inputs to emission equations would render EPA unable to

verify reported emission totals during the deferral period.

Response: EPA disagrees with this comment. For the direct emitter source categories, EPA recognizes that, during the deferral period, we will receive fewer data upon which to conduct electronic verification. As a result, as described in the December 27, 2010 deferral proposal, EPA temporarily will place additional emphasis on direct follow-up with facilities. Although we will not be requiring the reporting of equation inputs during the deferral period, we will nonetheless be requiring reporting of several different types of data that will be used for verification. These data include the calculation methodologies used, specific test methods that were used to determine equation inputs, an indication of whether missing data procedures were used, and various operating characteristics such as plant and equipment capacities and production rates. These data will be used in the electronic verification process. EPA is confident that electronic verification coupled with more robust direct follow-up will achieve verification during the deferral period.

IV. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. These amendments do not make any substantive changes to the reporting requirements in any of the subparts. The amendments simply delay reporting of certain data elements. However, the Office of Management and Budget has previously approved the information collection requirements for 31 subparts contained in the regulations promulgated on October 30, 2009 (ICR number 2300.03); subpart W promulgated on November 30, 2010 (ICR number 2376.02); subparts I, L, DD, QQ, and SS promulgated on December 1, 2010 (ICR number 2373.02); subparts T, FF, II, and TT promulgated on July 12, 2010; and subparts RR and UU promulgated on December 1, 2010 (ICR number 2372.02) under 40 CFR part 98 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The rule amendments will not impose any new requirements on small entities that are not currently required by Part 98.

EPA took several steps to reduce the impact of Part 98 on small entities. For example, EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, EPA conducted several meetings with industry associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. For a summary of EPA's consultations with State and/or local officials or other representatives of State and/or local governments in developing Part 98, see Section VIII.D of the preamble to the final rule (74 FR 56370, October 30, 2009). Finally, EPA continues to conduct significant outreach on the GHG reporting program and maintains an ''open door'' policy for stakeholders to help inform EPA's understanding of key issues for the industries.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The rule amendments do 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. Thus, the rule amendments are not subject to the requirements of section 202 and 205 of the 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 amendments will not impose any new requirements that are not currently required for Part 98, and the rule amendments would not unfairly apply to small governments. Therefore, this action is not subject to the requirements of section 203 of the UMRA.

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.

These amendments apply directly to facilities that supply certain products that would result in GHGs when released, combusted or oxidized and facilities that directly emit greenhouses gases. They do not apply to governmental entities unless the government entity owns a facility that directly emits GHGs above threshold levels (such as a landfill), so relatively few government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with State and local officials or representatives of State and local governments in developing Part 98. For a discussion of how Part 98 relates to existing State programs and a summary

of EPA's consultations with State and local government representatives during the development of Part 98, see Sections II and VIII of the preamble for the final Part 98 (74 FR 56260, October 30, 2009), respectively. In addition, after the July 7, 2010 CBI proposal, EPA held meetings with associations including State and local agencies, and considered public comments submitted by such agencies in developing the final confidentiality determinations and 40 CFR part 2 amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The rule amendments would not result in any changes to the requirements that are not currently required for Part 98. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA consulted with Tribal officials in developing Part 98. A summary of the concerns raised during that consultation and EPA's response to those concerns is provided in Section VIII.F of the preamble to the final Part 98 (74 FR 56371, October 30, 2009).

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

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

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that these rule amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This is because this rule addresses information collection and reporting procedures.

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 U.S. prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 9, 2011.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Suppliers, Reporting and recordkeeping requirements.

Dated: August 19, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as follows:

PART 98—[AMENDED]

■ 1. The authority citation for part 98 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 98.3 is amended by revising paragraph (c)(4)(vii) to read as follows:

§ 98.3 What are the general monitoring, reporting, recordkeeping, and verification requirements of this part?

* * * * *

(c) * * *

(4) * * *

(vii) The owner or operator of a facility is not required to report the data elements specified in Table A–6 to this subpart for calendar years 2010 through 2011 until March 31, 2013. The owner or operator of a facility is not required to report the data elements specified in Table A–7 to this subpart for calendar years 2010 through 2013 until March 31, 2015.

* * * * *

3. Subpart A is amended by revising Table A–6 to Subpart A of Part 98 and adding Table A–7 to Subpart A of Part 98 to read as follows:

TABLE A–6 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2013

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2013 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2013)
C	98.36(d)(1)(iv)	All.
C	98.36(d)(2)(ii)(G)	All.
C	98.36(d)(2)(iii)(G)	All.
C	98.36(e)(2)(iv)(G)	All.
C	98.36(e)(2)(viii)(A)	All.
C	98.36(e)(2)(viii)(B)	All.
C	98.36(e)(2)(viii)(C)	All.
C	98.36(e)(2)(x)(A)	All.
C	98.36(e)(2)(xi)	All.
DD	98.306(a)(2)	All.
DD	98.306(a)(3)	All.
DD	98.306(d)	All.
DD	98.306(e)	All.
DD	98.306(f)	All.
DD	98.306(g)	All.
DD	98.306(h)	All.
DD	98.306(i)	All.
DD	98.306(j)	All.
DD	98.306(k)	All.
DD	98.306(l)	All.
FF	98.326(a)	All.
FF	98.326(b)	All.
FF	98.326(c)	All.
FF	98.326(f)	Only quarterly volumetric flow rate.
FF	98.326(g)	Only quarterly CH_4 concentration.
FF	98.326(h)	Only weekly volumetric flow used to calculate CH_4 liberated from degasification systems.
FF	98.326(j)	All.
FF	98.326(k)	All.
FF	98.326(o)	All.
FF	98.326(p)	Only assumed destruction efficiency for the primary destruction device and assumed destruction efficiency for the backup destruction device.
HH	98.346(a)	Only year in which landfill first accepted waste, last year the landfill accepted waste (if used as an input in Equation HH–3), capacity of the landfill (if used as an input in Equation HH–3), and waste disposal quantity for each year of landfilling.
HH	98.346(b)	Only quantity of waste determined using the methods in § 98.343(a)(3)(i), quantity of waste determined using the methods in § 98.343(a)(3)(ii), population served by the landfill for each year, and the value of landfill capacity (LFC) used in the calculation.
HH	98.346(c)	All.
HH	98.346(d)(1)	Only degradable organic carbon (DOC) value, methane correction factor (MCF) values, and fraction of DOC dissimilated (DOCF) values.
HH	98.346(d)(2)	All.
HH	98.346(e)	Only fraction of CH_4 in landfill gas.
HH	98.346(f)	Only surface area associated with each cover type.
HH	98.346(g)	All.
HH	98.346(i)(5)	Only annual operating hours for the primary destruction device, annual operating hours for the backup destruction device, destruction efficiency for the primary destruction device, and destruction efficiency for the backup destruction device.
HH	98.346(i)(6)	All.
HH	98.346(i)(7)	Only surface area specified in Table HH–3, estimated gas collection system efficiency, and annual operating hours of the gas collection system.
HH	98.346(i)(9)	Only CH_4 generation value.
II	98.356(b)(1)	All.
II	98.356(b)(2)	All.
II	98.356(b)(3)	All.
II	98.356(b)(4)	All.
II	98.356(b)(5)	All.
II	98.356(d)(1)	All.
II	98.356(d)(7)	All.
II	98.356(d)(8)	Only annual operating hours for the primary destruction device, annual operating hours for the backup destruction device, destruction efficiency of the primary destruction device, and destruction efficiency of the backup destruction device.
SS	98.456(a)	All.
SS	98.456(b)	All.
SS	98.456(c)	All.
SS	98.456(d)	All.
SS	98.456(e)	All.
SS	98.456(f)	All.
SS	98.456(g)	All.
SS	98.456(h)	All.
SS	98.456(i)	All.

TABLE A–6 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2013—Continued

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2013 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2013)
SS	98.456(j)	All.
SS	98.456(m)	All.
SS	98.456(n)	All.
SS	98.456(o)	All.
SS	98.456(q)	All.
SS	98.456(r)	All.
SS	98.456(s)	All.
SS	98.456(t)	Only for any missing data the substitute parameters used to estimate emissions in their absence.
TT	98.466(a)(2)	All.
TT	98.466(a)(3)	Only last year the landfill accepted waste (for closed landfills using Equation TT–4).
TT	98.466(a)(4)	Only capacity of the landfill in metric tons (for closed landfills using Equation TT–4).
TT	98.466(c)(1)	All.
TT	98.466(c)(4)(i)	All.
TT	98.466(c)(4)(ii)	All.
TT	98.466(c)(4)(iii)	All.
TT	98.466(d)(1)	All.
TT	98.466(d)(2)	Only degradable organic carbon (DOC_X) value used in calculations.
TT	98.466(d)(3)	Only fraction of CH_4 in landfill gas.
TT	98.466(e)(2)	Only surface area (in square meters) at the start of the reporting year for the landfill sections that contain waste and that are associated with the selected cover type (for facilities using a landfill gas collection system).
TT	98.466(f)	All.

TABLE A–7 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2015

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2015 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2015)
A	98.3(d)(3)(v)	All.
C	98.36(b)(9)(iii)	Only estimate of the heat input.
C	98.36(c)(2)(ix)	Only estimate of the heat input from each type of fuel listed in Table C–2.
C	98.36(e)(2)(i)	All.
C	98.36(e)(2)(ii)(A)	All.
C	98.36(e)(2)(ii)(C)	Only HHV value for each calendar month in which HHV determination is required.
C	98.36(e)(2)(ii)(D)	All.
C	98.36(e)(2)(iv)(A)	All.
C	98.36(e)(2)(iv)(C)	All.
C	98.36(e)(2)(iv)(F)	All.
C	98.36(e)(2)(ix)(D)	All.
C	98.36(e)(2)(ix)(E)	All.
C	98.36(e)(2)(ix)(F)	All.
E	98.56(b)	All.
E	98.56(c)	All.
E	98.56(g)	All.
E	98.56(h)	All.
E	98.56(j)(1)	All.
E	98.56(j)(3)	All.
E	98.56(j)(4)	All.
E	98.56(j)(5)	All.
E	98.56(j)(6)	All.
E	98.56(l)	All.
F	98.66(a)	All.
F	98.66(c)(2)	All.
F	98.66(c)(3)	Only smelter-specific slope coefficients and overvoltage emission factors.
F	98.66(e)(1)	Only annual anode consumption (No CEMS).
F	98.66(f)(1)	Only annual paste consumption (No CEMS).
F	98.66(g)	All.
G	98.76(b)(2)	All.
G	98.76(b)(7)	All.
G	98.76(b)(8)	All.
G	98.76(b)(9)	All.
G	98.76(b)(10)	All.
G	98.76(b)(11)	All.
H	98.86(b)(2)	All.
H	98.86(b)(5)	All.
H	98.86(b)(6)	All.
H	98.86(b)(8)	All.
H	98.86(b)(10)	All.

TABLE A–7 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2015—Continued

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2015 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2015)
H	98.86(b)(11)	All.
H	98.86(b)(12)	All.
H	98.86(b)(13)	All.
H	98.86(b)(15)	Only monthly kiln-specific clinker factors (if used) for each kiln.
I	98.96(f)(1)	All.
I	98.96(g)	Only annual consumption of the gas (excluding annual consumption of gases for which the reporter did not calculate emissions using Equations I–6, I–7, I–8, I–9, and I–10 of subpart L).
I	98.96(h)	All.
I	98.96(i)	All.
I	98.96(j)	All.
I	98.96(k)	All.
I	98.96(l)	All.
I	98.96(n)	All.
I	98.96(o)	All.
I	98.96(q)(2)	Only inputs and results of calculations made accounting for the uptime of abatement systems used during the reporting year.
I	98.96(q)(3)	All.
I	98.96(q)(5)(iv)	Only inputs used to calculate the class average.
I	98.96(r)	All.
I	98.96(s)	Only estimates of inputs into the heat transfer fluid mass balance equation.
K	98.116(b)	Only annual production by product from each EAF (No CEMS).
K	98.116(e)(4)	All.
K	98.116(e)(5)	All.
L	98.126(b)(1)	Only data used in calculating the absolute errors and data used in calculating the relative errors.
L	98.126(b)(2)	All.
L	98.126(b)(6)	Only mass of each fluorine-containing reactant fed into the process.
L	98.126(b)(8)(i)	Only mass of each fluorine-containing product that is removed from the process and fed into the destruction device.
L	98.126(b)(8)(ii)	Only mass of each fluorine-containing by-product that is removed from the process and fed into the destruction device.
L	98.126(b)(8)(iii)	Only mass of each fluorine-containing reactant that is removed from the process and fed into the destruction device.
L	98.126(b)(8)(iv)	Only mass of each fluorine-containing by-product that is removed from the process and recaptured.
L	98.126(b)(8)(v)	All.
L	98.126(b)(9)(i)	All.
L	98.126(b)(9)(ii)	All.
L	98.126(b)(9)(iii)	All.
L	98.126(b)(10)	All.
L	98.126(b)(11)	All.
L	98.126(b)(12)	All.
L	98.126(c)(1)	Only quantity of the process activity used to estimate emissions.
L	98.126(c)(2)	All.
L	98.126(d)	Only estimate of missing data.
L	98.126(f)(1)	All.
L	98.126(g)(1)	All.
L	98.126(h)(2)	All.
N	98.146(b)(2)	Only annual quantity of carbonate based-raw material charged to each continuous glass melting furnace.
N	98.146(b)(4)	All.
N	98.146(b)(6)	All.
O	98.156(a)(2)	All.
O	98.156(a)(7)	All.
O	98.156(a)(8)	All.
O	98.156(a)(9)	All.
O	98.156(a)(10)	All.
O	98.156(b)(1)	All.
O	98.156(b)(2)	All.
O	98.156(d)(1)	All.
O	98.156(d)(2)	All.
O	98.156(d)(3)	All.
O	98.156(d)(4)	All.
O	98.156(d)(5)	All.
O	98.156(e)(1)	All.
P	98.166(b)(2)	All.
P	98.166(b)(5)	All.
P	98.166(b)(6)	All.
Q	98.176(b)	Only annual quantity taconite pellets, coke, iron, and raw steel (No CEMS).
Q	98.176(e)(1)	All.
Q	98.176(e)(3)	All.
Q	98.176(e)(4)	All.

TABLE A–7 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2015—Continued

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2015 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2015)
Q	98.176(f)(1)	All.
Q	98.176(f)(2)	All.
Q	98.176(f)(3)	All.
Q	98.176(f)(4)	All.
Q	98.176(g)	All.
R	98.186(b)(6)	All.
R	98.186(b)(7)	All.
S	98.196(b)(2)	All.
S	98.196(b)(3)	All.
S	98.196(b)(5)	All.
S	98.196(b)(6)	All.
S	98.196(b)(8)	All.
S	98.196(b)(10)	All.
S	98.196(b)(11)	All.
S	98.196(b)(12)	All.
U	98.216(b)	All.
U	98.216(e)(1)	All.
U	98.216(e)(2)	All.
U	98.216(f)(1)	All.
U	98.216(f)(2)	All.
V	98.226(c)	All.
V	98.226(d)	All.
V	98.226(i)	All.
V	98.226(j)	All.
V	98.226(m)(1)	All.
V	98.226(m)(3)	All.
V	98.226(m)(4)	All.
V	98.226(m)(5)	All.
V	98.226(m)(6)	All.
V	98.226(p)	All.
W	98.236(c)(1)(i)	All.
W	98.236(c)(1)(ii)	All.
W	98.236(c)(1)(iii)	All.
W	98.236(c)(2)(i)	All.
W	98.236(c)(3)(i)	All.
W	98.236(c)(3)(ii)	All.
W	98.236(c)(3)(iii)	All.
W	98.236(c)(4)(i)(A)	All.
W	98.236(c)(4)(i)(B)	All.
W	98.236(c)(4)(i)(C)	All.
W	98.236(c)(4)(i)(D)	All.
W	98.236(c)(4)(i)(E)	All.
W	98.236(c)(4)(i)(F)	All.
W	98.236(c)(4)(i)(G)	All.
W	98.236(c)(4)(i)(H)	All.
W	98.236(c)(4)(ii)(A)	All.
W	98.236(c)(5)(iii)	All.
W	98.236(c)(5)(iv)	All.
W	98.236(c)(5)(v)	All.
W	98.236(c)(6)(i)(B)	All.
W	98.236(c)(6)(i)(D)	All.
W	98.236(c)(6)(i)(E)	All.
W	98.236(c)(6)(i)(F)	All.
W	98.236(c)(6)(ii)(A)	All.
W	98.236(c)(6)(ii)(B)	All.
W	98.236(c)(7)(i)	All.
W	98.236(c)(8)(i)(B)	All.
W	98.236(c)(8)(i)(C)	All.
W	98.236(c)(8)(i)(F)	All.
W	98.236(c)(8)(ii)(A)	All.
W	98.236(c)(8)(ii)(D)	All.
W	98.236(c)(8)(iii)(A)	All.
W	98.236(c)(8)(iii)(D)	All.
W	98.236(c)(8)(iii)(E)	All.
W	98.236(c)(10)(ii)	All.
W	98.236(c)(10)(iii)	All.
W	98.236(c)(11)(ii)	All.
W	98.236(c)(12)(ii)	All.
W	98.236(c)(12)(iii)	All.
W	98.236(c)(12)(v)	All.

TABLE A–7 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2015—Continued

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2015 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2015)
W	98.236(c)(13)(i)(B)	All.
W	98.236(c)(13)(i)(E)	All.
W	98.236(c)(13)(i)(F)	All.
W	98.236(c)(13)(ii)(A)	All.
W	98.236(c)(13)(ii)(B)	All.
W	98.236(c)(13)(iii)(A)	All.
W	98.236(c)(13)(iii)(B)	All.
W	98.236(c)(13)(v)(A)	All.
W	98.236(c)(14)(i)(B)	All.
W	98.236(c)(14)(ii)(A)	All.
W	98.236(c)(14)(ii)(B)	All.
W	98.236(c)(14)(iii)(A)	All.
W	98.236(c)(14)(iii)(B)	All.
W	98.236(c)(14)(v)(A)	All.
W	98.236(c)(15)(i)(A)	All.
W	98.236(c)(15)(i)(B)	All.
W	98.236(c)(15)(ii)(A)	All.
W	98.236(c)(15)(ii)(B)	All.
W	98.236(c)(16)(i)	All.
W	98.236(c)(16)(ii)	All.
W	98.236(c)(16)(iii)	All.
W	98.236(c)(16)(iv)	All.
W	98.236(c)(16)(v)	All.
W	98.236(c)(16)(vi)	All.
W	98.236(c)(16)(vii)	All.
W	98.236(c)(16)(viii)	All.
W	98.236(c)(16)(ix)	All.
W	98.236(c)(16)(x)	All.
W	98.236(c)(16)(xi)	All.
W	98.236(c)(16)(xii)	All.
W	98.236(c)(16)(xiii)	All.
W	98.236(c)(16)(xiv)	All.
W	98.236(c)(17)(ii)	All.
W	98.236(c)(17)(iii)	All.
W	98.236(c)(17)(iv)	All.
W	98.236(c)(18)(i)	All.
W	98.236(c)(18)(ii)	All.
W	98.236(c)(19)(iv)	All.
W	98.236(c)(19)(vii)	All.
X	98.246(a)(4)	Only monthly volume values, monthly mass values, monthly carbon content values, molecular weights for gaseous feedstocks, molecular weights for gaseous products, and indication of whether the alternative method in § 98.243(c)(4) was used.
X	98.246(b)(5)(iii)	All.
X	98.246(b)(5)(iv)	All.
Y	98.256(e)(6)	Only molar volume conversion factor for each flare.
Y	98.256(e)(7)	Only molar volume conversion factor for each flare.
Y	98.256(e)(7)(ii)	All.
Y	98.256(e)(9)	Only annual volume of flare gas combusted, annual average higher heating value of the flare gas, volume of gas flared, average molecular weight, carbon content of the flare, and molar volume conversion factor if using Eq. Y–3.
Y	98.256(e)(10)	Only fraction of carbon in the flare gas contributed by methane.
Y	98.256(f)(7)	Only molar volume conversion factor.
Y	98.256(f)(10)	Only coke burn-off factor, annual throughput of unit, and average carbon content of coke.
Y	98.256(f)(11)	Only units of measure for the unit-specific CH_4 emission factor, activity data for calculating emissions, and unit-specific emission factor for CH_4.
Y	98.256(f)(12)	Only unit-specific emission factor for N_2O, units of measure for the unit-specific N_2O emission factor, and activity data for calculating emissions.
Y	98.256(f)(13)	Only average carbon content of coke.
Y	98.256(h)(4)	All.
Y	98.256(h)(5)	Only value of the correction, annual volume of recycled tail gas (if used to calculate recycling correction factor), and annual average mole fraction of carbon in the tail gas (if used to calculate recycling correction factor).
Y	98.256(i)(5)	Only annual mass of green coke fed, carbon content of green coke fed, annual mass of marketable coke produced, carbon content of marketable coke produced, and annual mass of coke dust removed from the process.
Y	98.256(i)(7)	Only the unit-specific CH_4 emission factor, units of measure for unit-specific CH_4 emission factor, and activity data for calculating emissions.
Y	98.256(i)(8)	Only units of measure for the unit-specific factor, activity data used for calculating emissions, and site-specific emissions factor.
Y	98.256(j)(2)	All.

TABLE A–7 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2015—Continued

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2015 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2015)
Y	98.256(j)(5)	Only CO_2 emission factor.
Y	98.256(j)(6)	Only CH_4 emission factor.
Y	98.256(j)(7)	Only carbon emission factor.
Y	98.256(j)(8)	Only CO_2 emission factor and carbon emission factor.
Y	98.256(j)(9)	Only CH_4 emission factor.
Y	98.256(k)(3)	Only dimensions of coke drum or vessel, typical gauge pressure of the coking drum, typical void fraction of coke drum or vessel, annual number of coke-cutting cycles of coke drum or vessel, and molar volume conversion factor for each coke drum or vessel.
Y	98.256(k)(4)	Only height and diameter of the coke drums, cumulative number of vessel openings for all delayed coking drums, typical venting pressure, void fraction, mole fraction of methane in coking gas.
Y	98.256(l)(5)	Only molar volume conversion factor.
Y	98.256(m)(3)	Only total quantity of crude oil plus the quantity of intermediate products received from off-site, CH_4 emission factor used, and molar volume conversion factor.
Y	98.256(n)(3)	All (if used in Equation Y–21 to calculate emissions from equipment leaks).
Y	98.256(o)(2)(ii)	All.
Y	98.256(o)(4)(ii)	All.
Y	98.256(o)(4)(iii)	All.
Y	98.256(o)(4)(iv)	All.
Y	98.256(o)(4)(v)	All.
Y	98.256(o)(4)(vi)	Only tank-specific methane composition data and gas generation rate data.
Y	98.256(o)(6)	Only quantity of unstabilized crude oil received during the calendar year; average pressure differential; and mole fraction of CH_4 in vent gas from the unstabilized crude oil storage tank.
Y	98.256(o)(7)	All.
Y	98.256(p)(2)	Only quantity of materials loaded that have an equilibrium vapor-phase concentration of CH_4 of 0.5 volume percent or greater.
Z	98.266(f)(5)	All.
Z	98.266(f)(6)	All.
AA	98.276(b)	All.
AA	98.276(c)	Only annual mass of the spent liquor solids combusted.
AA	98.276(d)	All.
AA	98.276(e)	All.
AA	98.276(f)	All.
AA	98.276(g)	All.
AA	98.276(h)	All.
AA	98.276(i)	All.
BB	98.286(b)(1)	All.
BB	98.286(b)(4)	All.
BB	98.286(b)(6)	All.
CC	98.296(b)(5)	Only monthly consumption of trona or liquid alkaline feedstock (for facilities using Equation CC–1).
CC	98.296(b)(6)	Only monthly production of soda ash for each manufacturing line(for facilities using Equation CC–2).
CC	98.296(b)(7)	All.
CC	98.296(b)(10)(i)	All.
CC	98.296(b)(10)(ii)	All.
CC	98.296(b)(10)(iii)	All.
CC	98.296(b)(10)(iv)	All.
CC	98.296(b)(10)(v)	All.
CC	98.296(b)(10)(vi)	All.
EE	98.316(b)(6)	All.
EE	98.316(b)(9)	All.
GG	98.336(b)(6)	All.
GG	98.336(b)(7)	All.
GG	98.336(b)(10)	All.
II	98.356(d)(2)	All (if conducting weekly sampling).
II	98.356(d)(3)	All (if conducting weekly sampling).
II	98.356(d)(4)	Only weekly average temperature (if conducting weekly sampling).
II	98.356(d)(5)	Only weekly average moisture content (if conducting weekly sampling).
II	98.356(d)(6)	Only weekly average pressure (if conducting weekly sampling).
TT	98.466(c)(3)(i)	All.
TT	98.466(c)(3)(ii)	Only waste disposal quantity and production quantity.
TT	98.466(c)(3)(iii)	All.

[FR Doc. 2011–21727 Filed 8–24–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 591, 592, and 593

[Docket No. NHTSA 2009–0143; Notice 2]

RIN 2127–AK32

Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends NHTSA's regulations pertaining to registered importers (''RIs'') of motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety. The agency is amending RI application and renewal requirements to enable the agency to deny applications for registration from entities that have been convicted of a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment and to revoke existing registrations held by such entities. Another amendment will require an RI to certify that it destroyed or exported nonconforming motor vehicle equipment removed from a vehicle during conformance modifications. The agency is also establishing new requirements for motor vehicles imported under import eligibility petitions, adopting a clearer definition of the term ''model year'' for import eligibility purposes, and requiring that import eligibility petitions include the type classification and gross vehicle weight rating (''GVWR'') of the subject vehicle. This notice also adopts several amendments to the RI regulations that add citations to provisions that can be used as a basis for the non-automatic suspension of an RI registration, deletes redundant text from another provision, and revises several sections to include the agency's current mailing address.

DATES: The amendments established by this final rule will become effective September 26, 2011. Petitions for reconsideration must be received by NHTSA not later than October 11, 2011.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice numbers identified above and should be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590. It is requested, but not required, that 10 copies of the petition be submitted. The petition must be received not later than 45 days after publication of this final rule in the **Federal Register**. Petitions filed after that time will be considered petitions filed by interested persons to initiate rulemaking pursuant to 49 U.S.C. Chapter 301.

The petition must contain a brief statement of the complaint and an explanation as to why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest. Unless otherwise specified in the final rule, the statement and explanation together may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. If it is requested that additional facts be considered, the petitioner must state the reason why they were not presented to the Administrator within the prescribed time. The Administrator does not consider repetitious petitions and unless the Administrator otherwise provides, the filing of a petition does not stay the effectiveness of the final rule.

FOR FURTHER INFORMATION CONTACT: For non-legal issues contact Clint Lindsay, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202–366–5288). For legal issues contact Nicholas Englund, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202–366–5263).

SUPPLEMENTARY INFORMATION:

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I. Background of This Rulemaking Action

A. The 1968 Importation Regulations and the Imported Vehicle Safety Compliance Act of 1988

The National Traffic and Motor Vehicle Safety Act of 1966 as amended (''the Safety Act''), now codified at 49 U.S.C. chapter 301, requires imported vehicles to meet Federal motor vehicle safety standards (''FMVSS''). Effective January 10, 1968, a regulation jointly issued by NHTSA and the United States Customs Service (''Customs''), 19 CFR 12.80, allowed permanent importation of motor vehicles not originally manufactured to meet applicable FMVSS if, within 120 days from the date of entry, the importer demonstrated that the vehicle had been brought into compliance with those standards.

The Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562, ''the 1988 Act''), which became effective on January 31, 1990, limited the importation of vehicles that did not comply with the FMVSS to those capable of being modified to comply. To enhance oversight, the 1988 Act required that necessary modifications be performed by ''registered importers'' (''RIs''). RIs are business entities that have demonstrated to NHTSA that they are technically and financially capable of importing nonconforming motor vehicles and of performing the necessary modifications on those vehicles so that they conform to all

applicable FMVSS. See generally, 49 U.S.C. 30141–30147.

B. Previous Regulatory Actions

1. The 2000 Notice of Proposed Rulemaking

As mandated by the 1988 Act, the agency issued regulations covering the RI program (49 CFR parts 591 through 594) that superseded those in 19 CFR 12.80. See 54 FR 40069, Sept. 29, 1989.

After nearly a decade of experience with the initial regulations under the 1988 Act, the agency identified a number of unanticipated difficulties in administering the RI program. To address these difficulties and to ensure that imported vehicles were properly brought into conformance, the agency tentatively concluded that more information from applicants and more specificity about the duties of RIs would be necessary. NHTSA published a Notice of Proposed Rulemaking (''NPRM'') on November 20, 2000 seeking to clarify RI duties and application requirements. 65 FR 69810, Nov. 20, 2000. The NPRM proposed amendments clarifying the registration, suspension, and revocation procedures for RIs.

2. The 2004 Final Rule

After considering the comments to the NPRM, the agency published a final rule amending the importation regulations on August 24, 2004. 69 FR 52070. These amendments established new requirements for RI applicants and further delineated the duties of RIs. The amendments also revised the provisions for suspending or revoking RI registrations.

C. The 2011 Proposal To Amend the RI Regulations

Nearly seven years have passed since the agency last amended the RI regulations in 2004. During those years, the agency has looked closely at the RI program and determined the need for further amendments to the regulations to improve the program. As discussed in the NPRM, 76 FR 2631, Jan. 14, 2011, these amendments are needed to protect the integrity of the RI program and to clarify RI requirements. In reviewing RI regulations, the agency determined that RI regulations did not give the agency the ability to prevent a person convicted of a crime related to the importation of a motor vehicle from becoming or remaining as an RI. Allowing such a convicted person to become or remain as an RI threatens the integrity of the RI program. Similarly, the agency has discovered that nonconforming equipment removed during conformance modifications, such as headlights, has been offered for sale in the United States on Internet auction sites. To prevent these threats to the RI program's integrity, the agency is amending RI regulations. Also, the agency will require RIs to certify that the information provided in the annual renewal statement they submit under 49 CFR 592.5(f) is true and correct.

The agency also identified the need to clarify regulations related to import eligibility petitions. RIs seeking import eligibility for a nonconforming motor vehicle may need to import a vehicle for the purpose of preparing an import eligibility petition. In the past, the agency has permitted entry of these vehicles on an *ad hoc* basis. This final rule formalizes and clarifies the protocol for bringing in a very limited number of vehicles for the purpose of preparing an eligibility petition. Also related to the import eligibility petitions, the agency is adopting a clearer definition of the term ''Model Year'' and requiring that import eligibility petitions identify the type classification and gross vehicle weight rating (''GVWR'') of the subject vehicle.

The agency is also making technical corrections to the regulations. These corrections will identify violations of the regulations in part 592 as a basis for the non-automatic suspension or revocation of an RI registration, delete redundant text, and update the agency's mailing address.

As noted above, the agency published a notice of proposed rulemaking (NPRM) on January 14, 2011 to solicit public comments on these amendments. No comments were received in response to the NPRM.

II. Amendments to the RI Regulations

A. The Agency May Deny Registration to, or Revoke the RI Status of, Entities Convicted of Certain Crimes

The statute authorizing the RI program directs the agency to ''establish procedures for registering a person who complies with requirements prescribed by the Secretary [of Transportation] by regulation under this subsection [49 U.S.C. 30141(c)]. * * *'' As part of its responsibilities, an RI has the duty to ensure that each nonconforming vehicle that it imports or agrees to modify is brought into compliance with all applicable Federal motor vehicle safety and bumper standards, that an accurate statement of conformity is submitted to NHTSA certifying the vehicle's compliance following the completion of the modifications, and that the vehicle is not released for operation on the public roads until NHTSA releases the conformance bond. The agency approves RIs for the specific purpose of carrying out these important safety responsibilities. In this respect, each RI occupies a position of public trust to ensure that nonconforming vehicles imported under its auspices are properly conformed to all applicable standards before they are operated on public roads in the United States.

Congress authorized NHTSA to establish procedures and requirements for registering Registered Importers. Congress did not delineate all the requirements in the statute, but instead required NHTSA to issue rules. 49 U.S.C. 30141(c). The statute includes a non-exhaustive list of requirements that NHTSA should adopt, which would promote integrity in the RI program. These include record keeping requirements, records and facilities inspection authority, and the establishment of technical and financial requirements. In addition, the statute required NHTSA to establish procedures for revoking or suspending an RI registration for not complying with a requirement of 49 U.S.C. Chapter 301 Subchapter III, or any of sections 30112, 30115, 30117–30122, 30125(c), 30127, or 30166 of title 49 U.S. Code or regulations promulgated under Chapter 301 Subchapter III or any of the preceding sections, as well as automatic suspensions. 49 U.S.C. 30141(c)(4).

Because RIs hold positions of public trust, we are amending the RI regulations to prevent persons or entities convicted of a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment from gaining or maintaining RI status.

We are amending 49 CFR 592.5(e)(1) to state that the agency may deny registration to applicants who have been convicted of a crime related to the importation, purchase, or sale of motor vehicles or motor vehicle equipment. The amendments allow the agency to deny registration to an applicant if any person associated with direct or indirect ownership or control of the applying entity, or any person employed by or associated with the applicant or applying entity, has been convicted of a crime related to the importation, purchase, or sale of motor vehicles or motor vehicle equipment. These offenses include, but are not limited to, title fraud, odometer fraud, or the sale of stolen vehicles. For the purposes of this final rule, the phrase ''convicted of a crime'' means a criminal conviction, whether entered on a verdict or plea, including a plea of *nolo contendere,* for which sentence has been imposed, whether convicted in the U.S. or in foreign jurisdictions.

We are also amending the regulations to allow the agency to deny registration renewal to RIs who have been convicted of, or whose business is directly or indirectly owned or controlled by, or under common ownership or control with, a person who has been convicted of a motor vehicle-related crime.

The integrity of the RI program is undermined when an entity, after becoming an RI, is convicted of a motor vehicle-related crime. A convicted entity, possessing a current registration and knowing that its registration will not be renewed, may have little incentive to faithfully follow its duties as an RI. The agency believes that waiting until the end of the fiscal year to deny registration renewal to a convicted entity poses an unacceptable risk to the public. To protect the program from this risk, we are amending Section 592.5(f) to state that an existing RI or any person who directly or indirectly owns or controls, or has common ownership or control of the RI's business, must not be convicted of a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment. After the RI has been convicted, RI status may be revoked under Section 592.7(b).

B. Information Submitted in Annual RI Registration Renewals Must Be True and Correct

Under 49 CFR 592.5(a)(11), parties applying for RI status must certify that all information provided in the application is true and correct. As noted above, RIs occupy a position of public trust by certifying that imported nonconforming vehicles have been brought into conformity with all applicable safety standards. In deciding whether to register an applicant as an RI, the agency must be able to trust that the information provided in the application is accurate and truthful. If the agency discovers that an applicant submitted false or inaccurate information, the application may be denied. 49 CFR 592.5(e)(1).

NHTSA's regulations require RIs to annually renew their registrations. When evaluating a request for renewal, the Administrator must be able to rely on the accuracy and truthfulness of the annual statement submitted under 49 CFR 592.5(f) and 592.6(k) in support of that request. Existing RIs, however, are not currently required to certify that the renewal request is truthful. To address this shortcoming, we are amending § 592.5(f) and § 592.6(k) to require an RI to certify that all the information submitted in its annual renewal statement is true and correct. Any RI making a false or inaccurate certification in this statement may have its registration suspended or revoked pursuant to § 592.7(b).

C. RIs Must Certify Destruction or Exportation of Nonconforming Motor Vehicle Equipment Removed From Imported Vehicles During Conformance Modifications

The 1988 Act allows an RI to permanently import nonconforming vehicles if NHTSA has determined that the vehicle can be modified to comply with all applicable FMVSS. During conformance modification of nonconforming vehicles, RIs often must remove the nonconforming motor vehicle equipment items from these vehicles and replace the components with equipment meeting applicable FMVSS. Motor vehicle equipment items subject to the FMVSS include tires, wheels, brake hoses, brake fluid, seat belt assemblies, lighting equipment, and glazing. The final disposition of this equipment is a concern for the agency because the Safety Act prohibits the sale of nonconforming equipment.

To prevent nonconforming equipment from being sold in the United States, NHTSA has previously directed RIs to destroy or export the noncompliant equipment removed from a vehicle during conformance modifications. NHTSA has also directed RIs to certify in the statements of conformity submitted for the modified vehicle that all nonconforming equipment has been destroyed or exported.

Despite these efforts, nonconforming equipment removed from vehicles by RIs has been offered for sale on the Internet. To ensure that this noncompliant equipment does not enter interstate commerce, we are amending § 592.6(d) to require RIs to certify that all nonconforming equipment on an imported vehicle has been destroyed or exported. This certification must be made in the statement of conformity the RI submits to the agency upon the completion of all conformance modifications. Failing to certify the destruction or exportation of nonconforming equipment items removed from imported vehicles would result in the agency withholding release of the DOT conformance bond furnished for the vehicle at its time of entry and also may subject the RI to the suspension or revocation of its registration and to civil penalties.

D. Establishing Procedures for Importation of Motor Vehicles for the Purpose of Preparing an Import Eligibility Petition

A motor vehicle not originally manufactured to meet applicable FMVSS may not be imported on a permanent basis unless NHTSA determines, on its own initiative or upon the petition of an RI, that the vehicle is eligible for importation. 49 U.S.C. 30141(a)(1).

Two categories of vehicles are eligible for importation under section 30141(a)(1). The first are vehicles that can be readily altered to conform to the FMVSS and are substantially similar to vehicles certified as conforming to those standards (*i.e.,* U.S.-certified counterparts). 49 U.S.C. 30141(a)(1)(A). The second category covers vehicles that do not have a substantially similar U.S.-certified counterpart but are capable of being altered to comply with all applicable FMVSS. 49 U.S.C. 30141(a)(1)(B). In the latter category, proof of compliance is based on dynamic test data or evidence that NHTSA decides adequately demonstrates compliance. *Id.* After NHTSA decides that a particular model and model year vehicle is eligible for importation, the agency assigns the vehicle a unique vehicle eligibility number that permits entry of the vehicle into the United States.

To develop a petition, an RI may need to physically examine at its facility in the United States a motor vehicle that was not certified by its manufacturer as complying with all applicable FMVSS and compare that vehicle to a U.S.-certified vehicle of the same model and model year. If there is no substantially similar U.S.-certified vehicle, the RI may need to import as many as two motor vehicles in order to conduct crash tests or conduct other tests or analyses to demonstrate the vehicle's compliance with applicable FMVSS.

NHTSA has previously informed RIs that only one vehicle may be imported for the purpose of preparing an import eligibility petition unless destructive test data is needed, in which case the agency will authorize the importation of one additional vehicle. Because formal regulations do not address these allowances, the agency has made these decisions on an *ad hoc* basis.

In May 2006, NHTSA amended the HS–7 Declaration form by including a new Box 13 to provide for the entry of nonconforming vehicles by RIs for the purpose of preparing an import eligibility petition. When the agency amended the form, however, we did not make corresponding amendments to 49 CFR part 591 to reflect the new contents of the HS–7 Declaration form. In order to harmonize the HS–7 Declaration form and the corresponding import regulations under § 591.5, the agency is amending § 591.5 to provide a regulatory basis for the importation of

vehicles for the purpose of preparing an import eligibility petition.

In the NPRM, the agency requested comments regarding whether importing one vehicle is sufficient for the purpose of preparing an import eligibility petition for a vehicle that has a substantially similar U.S.-certified counterpart and whether importing two vehicles is sufficient where destructive crash test data is required to establish compliance with all applicable FMVSS. The agency received no comments on these issues and we are adopting the amendments as proposed. See 76 FR 2633, Jan. 14, 2011.

Accordingly, for an import eligibility petition covering a vehicle that is substantially similar to a U.S.-certified vehicle, RIs may import one vehicle in order to prepare the petition. For an import eligibility petition covering a vehicle that does not have a substantially similar U.S.-certified counterpart but is capable of being altered to comply, RIs may import up to two vehicles in order to prepare the petition.

These importations to prepare a petition will be subject to certain conditions to prevent abuse. An RI seeking to import a vehicle in support of a petition must inform NHTSA that it will, or has, petitioned the agency for an import eligibility decision. The RI will need NHTSA's written permission to import the vehicle. RIs must follow this procedure and may not declare the vehicle under Box 3 as one that has already been determined eligible for importation or enter an agency-assigned vehicle eligibility number on the HS–7 Declaration form. Improper use of an agency-assigned vehicle eligibility number on the HS–7 Declaration form for a vehicle imported to prepare an eligibility petition will be considered a violation of 49 U.S.C. 30112(a) and 49 CFR 592.6(a). Such a violation would subject the RI to the suspension or revocation of its registration (see 49 CFR 592.7(b)(1)) as well as civil penalties.

Vehicles imported for the purpose of preparing an import eligibility petition will be authorized to remain in the United States for only a limited time. The importing RI must file an import eligibility petition with the agency within 180 days of the vehicle's entry date. The RI must declare on the HS–7 Declaration form (Box 13) that it will destroy, export, or abandon the vehicle to the United States if NHTSA dismisses or denies the petition, if the RI withdraws the petition, or if the RI does not file a petition within 180 days from the date of entry. The vehicle must be destroyed, delivered to Customs for exportation, or abandoned to the United States within 30 days from the date of the dismissal, denial, or withdrawal of the RI's petition, as appropriate, or within 210 days from the date of the vehicle's entry if the RI fails to submit a petition. The RI must submit to NHTSA documentary proof of the vehicle's destruction, exportation, or abandonment within 15 days from the date of such action.

An RI will not need to obtain a DOT conformance bond when importing a nonconforming vehicle for the purpose of preparing an import eligibility petition. These conformance bonds are needed when NHTSA has determined that a particular vehicle is capable of being modified to meet U.S. standards. For vehicles imported to prepare a petition, the final rule provides for the use of a Temporary Importation Bond (''TIB''). The TIB serves as the RI's promise that the vehicle, which is imported on a temporary basis for up to one year for the purpose of testing or inspection, will be exported or destroyed. The RI must post a TIB with U.S. Customs and Border Protection (''CBP'') for twice the amount of duty, taxes, *etc.,* that would otherwise be due at the time the vehicle is imported. If the RI does not export or destroy the vehicle, it is subject to forfeiture of the TIB and penalties for violations of NHTSA's regulations including civil penalties and the suspension or revocation of the RI's registration.

Under these amendments, if the agency grants the import eligibility petition the RI must do one of the following: furnish a DOT conformance bond for the vehicle, export the vehicle, abandon the vehicle to the United States, or destroy the vehicle. If the RI intends to bring the vehicle into compliance, the RI must submit a complete conformance package to the agency within 120 days from the date the petition is granted. If the vehicle has been destroyed, the RI must submit documentary proof of the destruction to the agency within 30 days from the date destruction. These recitals are reflected in the text that the agency is adding to § 591.5.

E. Adopting a Clearer Definition of the Term ''Model Year'' for the Purpose of Import Eligibility Decisions

Vehicles manufactured for sale in the United States are typically assigned model year designations for marketing and other purposes. Although the model year traditionally begins on September 1, it can begin on other dates as well. A date that is more important from the agency's perspective under 49 U.S.C. Chapter 301 subchapter III is the vehicle's ''date of manufacture,'' defined as the date on which manufacturing operations are completed on a vehicle at its place of main assembly. See 49 CFR 567.4(g)(2) and 49 CFR 571.7. The agency uses a vehicle's date of manufacture to identify the specific FMVSS requirements that the vehicle must be certified to meet. Manufacturers of vehicles intended for sale in the United States must affix to those vehicles a label that, among other things, identifies the vehicle's date of manufacture and certifies that the vehicle complies with all applicable FMVSS in effect on that date. 49 U.S.C. 30115; 49 CFR 567.4(g).

Many European manufacturers do not use a model year designation for vehicles manufactured for their own markets. Instead, they rely on the calendar year in which the vehicle is produced. Moreover, the countries in which these vehicles are produced generally do not assign model year designations. Although, as previously noted, September 1 through August 31 is commonly accepted as the model year for vehicles in the United States, these dates have limited relevance, if any, to vehicles that are produced for sale abroad.

As discussed above, vehicles not manufactured to conform to FMVSS may be imported into the U.S. by an RI if the agency has determined the vehicle is eligible. The agency may make this determination based on an import eligibility petition or on the agency's own initiative. When an import eligibility petition is based on the substantial similarity of the subject vehicle to a U.S.-certified counterpart, section 30141(a)(1)(A) provides for the agency to make the eligibility decision on a model and model year basis. Because many European manufacturers do not use a model year designation, RIs have a difficult time determining whether a particular vehicle has a substantially similar U.S.-certified counterpart of the same model year.

Consequently, the agency will amend the definition of ''model year'' in 49 CFR 593.4 by deleting ''the calendar year that begins on September 1 and ends on August 31 of the next calendar year,'' as one of the alternative definitions of the term ''model year.'' The deleted text will be replaced with the following: ''the calendar year (*i.e.,* January 1 through December 31) in which manufacturing operations are completed on the vehicle at its place of main assembly.'' The new language is consistent with how manufacturers must identify the date of manufacture in the vehicle's certification label. See 49 CFR 567.4(g)(2). This change will eliminate much of the confusion now

confronting RIs over the issue of whether a given vehicle manufactured for sale abroad has a substantially similar U.S.-certified counterpart of the same model year.

After an RI performs all modifications necessary to conform a vehicle to all applicable Federal motor vehicle safety and bumper standards, and remedies all noncompliances and defects that are the subject of any pending safety recalls, the RI must permanently affix to the vehicle a certification label that meets the content requirements of 49 CFR 567.4(k). Under 49 CFR 567.4 (k)(4)(i), the RI must identify the vehicle's model year or year of manufacture on the label. We are amending 49 CFR 567.4(k)(4)(i) to reflect the new definition of model year that will be added to 49 CFR 593.4.

F. Requiring Import Eligibility Petitions To Identify the Type Classification and Gross Vehicle Weight Rating (''GVWR'') of the Subject Vehicles

In making import eligibility decisions, the agency determines the safety standards applicable to a particular vehicle by, among other things, taking account of the model, model year (if assigned), date of manufacture, the type classification, and the gross vehicle weight rating (''GVWR'') of the vehicle. The various type classifications that a vehicle can be assigned are defined in the agency's regulations at 49 CFR 571.3. Those type classifications include passenger car, multipurpose passenger vehicle (''MPV''), truck, bus, motorcycle, trailer, and low-speed vehicle (''LSV''). The regulations also define GVWR as the loaded weight of the vehicle as specified by the manufacturer. 49 CFR 571.3.

The agency has access to the type classification and GVWR of U.S.-certified vehicles. Manufacturers of U.S.-certified vehicles must identify the type classification on the vehicle's certification label. See 49 CFR 567.4(g)(7). Manufacturers must also identify on the certification label the GVWR they have assigned to the vehicle. 49 CFR 567.4(g)(3). However, determining the type classification and GVWR of a motor vehicle without a substantially similar U.S.-certified counterpart can require some work. The agency may expend considerable time and effort ascertaining this information, thereby delaying the processing of the petition.

To rectify this situation, NHTSA is adopting a requirement that all import eligibility petitions under 49 CFR 593.6(a) must include the type classification and the GVWR of the vehicle. The final rule will amend 49 CFR 593.6(a) and (b) by adding language to require identification of the vehicle's type classification as defined in 49 CFR 571.3. If the petition is or will be submitted under 49 CFR 593.6(a), on the basis that the vehicle is substantially similar to a vehicle which was originally manufactured for importation into and sale in the United States, and which was certified by its manufacturer pursuant to 49 CFR part 567, then the RI must use the type classification of the vehicle's U.S.-certified counterpart. If the petition is or will be submitted under 593.6(b), on the basis that the vehicle's safety features comply with, or are capable of being modified to comply with, all applicable FMVSS, then the RI must identify the vehicle's type classification consistent with 49 CFR 571.3.

The final rule will also amend 49 CFR 593.6(a) and (b) by adding language to require identification of the vehicle's GVWR. If the petition is or will be submitted under 49 CFR 593.6(a), on the basis that the vehicle is substantially similar to a vehicle which was originally manufactured for importation into and sale in the United States, and which was certified by its manufacturer pursuant to 49 CFR part 567, then the RI must use the GVWR of the vehicle's U.S.-certified counterpart.

If the petition is or will be submitted under 593.6(b), on the basis that the vehicle's safety features comply with, or are capable of being modified to comply with, all applicable FMVSS, then the RI must identify the GVWR consistent with certification requirements of 49 CFR 567.4(g)(3) and 49 CFR 571.3. Pursuant to 49 CFR 593.7, the agency may accept or reject the GVWR identified in the petition.

The agency notes that if the vehicle is ultimately certified to meet applicable FMVSS, the GVWR must be included in the certification label required by 49 CFR part 567. Per the certification requirements, the GVWR shall not be less than the sum of the unloaded vehicle weight (as defined by § 571.3), the rated cargo load, and 150 pounds multiplied by the number of designated seating positions. 49 CFR 567.4(g)(3). Of course, compliance with a number of FMVSS is predicated on testing at the GVWR.

III. Technical Corrections

A. Identifying a Violation of Regulations in Part 592 as a Basis for the Non-Automatic Suspension or Revocation of an RI Registration

NHTSA is required by statute to establish procedures for revoking or suspending an RI's registration for not complying with a requirement of 49 U.S.C. 30141–30147, or any of 49 U.S.C. 30112, 30115, 30117–30122, 30125(c), 30127, or 30166, or any regulations issued under these sections. 49 U.S.C. 30141(c)(4). Regulations implementing this provision are found at 49 CFR 592.7. The agency amended § 592.7(b), as part of the 2004 rule, to list the regulations that, if violated, provide grounds for the suspension or revocation of an RI registration. These regulations were identified as including, but not being limited to, parts 567, 568, 573, 577, 591, 593, and 594. Part 592 was inadvertently omitted from this list. We are amending § 592.7(b) to add part 592.

B. Deletion of Redundant Text From 49 CFR 592.5(a) Identifying Contents of the RI Application

49 CFR 592.5(a)(4)(v) requires an application for registration as an RI to include the statement that ''the applicant has never had a registration revoked pursuant to § 592.7, nor is it, nor was it, directly or indirectly, owned or controlled by, or under common ownership or control with, a Registered Importer that has had a registration revoked pursuant to § 592.7.'' This requirement is also expressed, in identical language, in § 592.5(a)(6). To correct this redundancy, we are deleting the text at § 592.5(a)(4)(v). This does not eliminate a requirement.

C. Revisions to Certain Provisions To Reflect the Agency's Current Street Address

Sections 591.6(f)(1), 592.5(a)(1), 592.8(b), 593.5(b)(2), and 593.10(a), prescribe requirements for submitting information to NHTSA and identify the agency's address. The agency will amend these sections to reflect the agency's current street address.

IV. Effective Date

The amendments adopted in this notice will become effective 30 days after issuance of this final rule.

V. Rulemaking Analyses and Notices Regulatory Text

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking document under Executive Order 12886. Further, NHTSA has determined that this rulemaking is not

significant under the Department of Transportation's regulatory policies and procedures. NHTSA currently anticipates the costs of the final rule to be so minimal as not to warrant preparation of a full regulatory evaluation. The rule does not involve any substantial public interest or controversy. It has no substantial effect upon State and local governments. It has no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the RI program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

The agency has considered the effects of this rulemaking under the Regulatory Flexibility Act, and certifies that the adopted amendments will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The adopted amendments will primarily affect entities that are currently modifying nonconforming vehicles and which are small businesses within the meaning of the Regulatory Flexibility Act. At present, 65 such entities are registered with NHTSA. The adopted amendments will not significantly increase operating costs for any of these entities or impose any additional financial burden upon them.

Small governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and believes that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency believes that this final rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule will not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

D. National Environmental Policy Act

NHTSA has analyzed this action for the purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment because it is not likely to change the volume of motor vehicles imported through RIs.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' the agency has considered whether the amendments adopted in this final rule would have any retroactive or preemptive effect. NHTSA concludes that these amendments will not have any such effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because this final rule will not require the expenditure of resources beyond $100 million annually, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule includes collections of information that are part of ''Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards,'' OMB control number 2127–0002. This clearance, which was based on a submission that accounted for the minor increase in the collection of information that will result from the final rule, is valid through January 31, 2014.

H. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking is not economically significant and no analysis of its impact on children is required.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing 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, such as the Society of Automotive Engineers (''SAE''). The NTTAA directs the agency to provide Congress, through the OMB, with explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have concluded that there are no voluntary consensus standards applicable to this final rule.

J. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, 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).

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (''RIN'') to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

In consideration of the foregoing, NHTSA is amending 49 CFR parts 567, 591, 592, and 593 as follows:

List of Subjects in 49 CFR Parts 567, 591, 592, and 593

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, the agency amends parts 567, 591, 592, and 593, in Title 49 of the Code of Federal Regulations as follows:

PART 567—CERTIFICATION

■ 1. The authority citation for part 567 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50.

■ 2. In § 567.4, revise paragraph (k)(4)(i) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(k) * * *

(4) * * *

(i) Model year (if applicable) or year of manufacture and line of the vehicle, as reported by the manufacturer that produced or assembled the vehicle. ''Model year'' is used as defined in § 593.4 of this chapter. ''Line'' is used as defined in § 541.4 of this chapter.

* * * * *

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER AND THEFT PREVENTION STANDARDS

■ 1. The authority citation for part 591 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

■ 2. Add § 591.5(l) to read as follows:

§ 591.5 Declarations required for importation.

* * * * *

(l) The vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards (but does conform to applicable Federal Theft Prevention Standards) but the importer is eligible to import it because:

(1) The importer has registered with NHTSA pursuant to part 592 of this chapter, and such registration has not been revoked or suspended;

(2) The importer has informed NHTSA in writing that (s)he intends to submit, or has already submitted, a petition requesting that NHTSA determine whether the vehicle is eligible for importation; and

(3) The importer has:

(i) Submitted to the Administrator a letter requesting permission to import the vehicle for the purpose of preparing an import eligibility petition; and

(ii) Received written permission from the Administrator to import the vehicle.

■ 3. Amend § 591.6 by revising the last sentence of paragraph (f)(1) and adding a new paragraph (g) to read as follows:

§ 591.6 Documents accompanying declarations.

* * * * *

(f) * * *

(1) * * * The request shall be addressed to Director, Office of Vehicle Safety Compliance, West Building—Fourth Floor, Room W43–481, Mail Code NVS–220, 1200 New Jersey Avenue, SE., Washington, DC 20590.

* * * * *

(g) A declaration made pursuant to § 591.5(l) shall be accompanied by the following documentation:

(1) A letter from the Administrator authorizing importation pursuant to § 591.5(l). A Registered Importer seeking to import a motor vehicle pursuant to this section must submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the vehicle, its original manufacturer, model, model year (if assigned), date of manufacture, and VIN. The statement must also declare that the specific purpose of importing this vehicle is to prepare a petition to the Administrator requesting a determination whether the vehicle is eligible for importation pursuant to part 593 and that the importer has filed, or intends to file within 180 days of the vehicle's entry date, a petition pursuant to § 593.5. The request must be addressed to Director, Office of Vehicle Safety Compliance, Fourth Floor, Room W43–481, Mail Code NVS–220, 1200 New Jersey Avenue, SE., Washington, DC 20590.

■ 4. In § 591.7, add paragraph (f) to read as follows:

§ 591.7 Restrictions on importations.

* * * * *

(f) If a vehicle has entered the United States under a declaration made pursuant to § 591.5(l) and:

(1) If the Administrator of NHTSA dismisses the petition or decides that the vehicle is not eligible for importation, or if the importer withdraws the petition or fails to submit a petition covering the vehicle within 180 days from the date of entry, the importer must deliver the vehicle, unless it is destroyed (with destruction documented by proof), to the Secretary of Homeland Security for export, or abandon the vehicle to the United States, within 30 days from the date of the dismissal, denial, or withdrawal of the importer's petition, as appropriate, or within 210 days from the date of entry if the importer fails to submit a petition covering the vehicle, and furnish NHTSA with documentary proof of the vehicle's exportation, abandonment, or destruction within 15 days from the date of such action; or

(2) If the Administrator grants the petition, the importer must:

(i) Furnish a bond, in an amount equal to 150 percent of the entered value of the vehicle as determined by the Secretary of the Treasury, within 15 days from the date the importer is notified that the petition has been granted, unless the vehicle has been destroyed, and bring the vehicle into conformity with all applicable Federal motor vehicle safety and bumper standards within 120 days from the date the petition is granted; or,

(ii) Deliver the vehicle to the Secretary of Homeland Security for export within 30 days from the date the importer is notified that the petition has been granted; or

(iii) Abandon the vehicle to the United States within 30 days from the date the importer is notified that the petition has been granted; or

(iv) Destroy the vehicle within 30 days from the date the importer is notified that the petition has been granted; and

(v) Furnish NHTSA with documentary proof of the vehicle's exportation, abandonment, or destruction within 15 days from the date of such action.

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 592 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

■ 2. In § 592.4, add the definition of ''Convicted of a crime'' to read as follows:

§ 592.4 Definitions.

* * * * *

Convicted of a crime means receiving a criminal conviction in the United States or in a foreign jurisdiction, whether entered on a verdict or plea, including a plea of *nolo contendere,* for which sentence has been imposed.

* * * * *

■ 3. In § 592.5, revise paragraph (a)(1), amend paragraph (a)(4)(iv) by adding ''and'' after the last semicolon, remove paragraph (a)(4)(v), redesignate paragraph (a)(4)(vi) as paragraph (a)(4)(v), revise paragraph (e)(1) and paragraph (f), and add paragraph (i) to read as follows:

§ 592.5 Requirements for registration and its maintenance.

(a) * * *

(1) Is headed with the words ''Application for Registration as Importer'', and submitted in three copies to: Director, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Fourth Floor, Room W43–481, Mail Code NVS–220, 1200 New Jersey Avenue, SE., Washington, DC 20590.

* * * * *

(e)(1) The Administrator:

(i) Shall deny registration to an applicant who (s)he decides does not comply with the requirements of paragraph (a) of this section;

(ii) Shall deny registration to an applicant whose previous registration has been revoked;

(iii) May deny registration to an applicant who has been convicted of, or whose business is directly or indirectly owned or controlled by, or under common ownership or control with, a person who has been convicted of, a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment, including, but not limited to, offenses such as title fraud, odometer fraud, auto theft, or the sale of stolen vehicles; and

(iv) May deny registration to an applicant that is or was owned or controlled by, or under common ownership or control with, or in affinity with, a Registered Importer whose registration has been revoked. In determining whether to deny an application, the Administrator may consider whether the applicant is comprised in whole or in part of relatives, employees, major shareholders, partners, or relatives of former partners or major shareholders of a Registered Importer whose registration has been revoked.

* * * * *

(f) In order to maintain its registration, a Registered Importer must:

(1) Not be convicted of, or have any person associated with direct or indirect ownership or control of the registered importer's business or any person employed by or associated with the registered importer who is convicted of, a crime related to the importation, purchase, or sale of motor vehicles or motor vehicle equipment. These offenses include, but are not limited to, title fraud, odometer fraud, or the sale of stolen vehicles.

(2) File an annual statement. The annual statement must be titled ''Yearly Statement of Registered Importer'' and include the following written statements:

(i)''I certify that I have read and understand the duties of a Registered Importer, as set forth in 49 CFR 592.6, and that [name of Registered Importer] continues to comply with the requirements for being a Registered Importer.''

(ii) ''I certify that all information provided in each of my previous annual statements, submitted pursuant to § 592.6(q), or changed in any notification that [name of Registered Importer] may have provided to the Administrator in compliance with § 592.6(l), remains correct and that all the information provided in this annual statement is true and correct.''

(iii) ''I certify that I understand that, in the event that its registration is suspended or revoked, or lapses, [name of Registered Importer] will remain obligated to notify owners and to remedy noncompliance issues or safety related defects, as required by 49 CFR 592.6(j), for each vehicle for which [name of Registered Importer] has furnished a certificate of conformity to the Administrator.''

(3) Include with its annual statement a current copy of the Registered Importer's service insurance policy. Such statements must be filed not later than September 30 of each year; and

(4) Pay an annual fee and any other fee that is established under part 594 of this chapter. An annual fee must be paid not later than September 30 of any calendar year for the fiscal year that begins on October 1 of that calendar year. The Registered Importer must pay any other fee not later than 15 days after the date of the written notice from the Administrator.

* * * * *

(i) The Administrator may deny registration renewal to any applicant who has been convicted of, or whose business is directly or indirectly owned or controlled by, or under common ownership or control with, a person who has been convicted of, a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment, including, but not limited to, title fraud, odometer fraud, or the sale of stolen vehicles.

■ 4. In § 592.6, revise paragraphs (d) introductory text, (d)(1) and (k) to read as follows:

§ 592.6 Duties of a registered importer.

* * * * *

(d) For each motor vehicle imported pursuant to part 591.5(f) of this chapter, certify to the Administrator:

(1) Within 120 days of the importation that it has brought the motor vehicle into conformity with all applicable Federal motor vehicle safety and bumper standards in effect at the time the vehicle was manufactured by the fabricating manufacturer. Such certification shall state verbatim either that ''I know that the vehicle that I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because I personally witnessed each modification performed on the vehicle to effect compliance,'' or that ''I know that the vehicle I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because the person who performed the necessary modifications to the vehicle is an employee of [RI name] and has provided full documentation of the work that I have reviewed, and I am satisfied that the vehicle as modified complies.'' The Registered Importer shall also certify that it has destroyed or exported any noncompliant motor vehicle equipment items that were removed from an imported vehicle in the course of performing conformance modifications. The Registered Importer shall also certify, as appropriate, that either:

* * * * *

(k) Provide an annual statement, certifying that the information therein is true and correct, and pay an annual fee as required by § 592.5(f).

* * * * *

■ 5. In § 592.7, revise the last sentence of paragraph (b)(1) to read as follows:

§ 592.7 Suspension, revocation, and reinstatement of suspended registrations.

* * * * *

(b) * * *

(1) * * * These regulations include, but are not limited to, parts 567, 568,

573, 577, 591, 592, 593, and 594 of this chapter.

* * * * *

■ 6. In § 592.8, revise the third sentence of paragraph (b) to read as follows:

§ 592.8 Inspection; release of vehicle and bond.

* * * * *

(b) * * * Each submission shall be mailed by certified mail, return receipt requested, or by private express delivery service to: Director, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Fourth Floor, Room W43–481, Mail Code NVS–220, 1200 New Jersey Avenue, SE., Washington, DC 20590 or delivered in person. * * *

* * * * *

PART 593—DETERMINATIONS THAT A VEHICLE NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS IS ELIGIBLE FOR IMPORTATION

■ 1. The authority citation for part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50.

■ 2. In § 593.4, revise the definition of ''Model Year'' to read as follows:

§ 593.4 Definitions.

* * * * *

Model year means the year used by a manufacturer to designate a discrete vehicle model irrespective of the calendar year in which the vehicle was actually produced, or the model year as designated by the vehicle's country of origin, or, if neither the manufacturer nor the country of origin has made such a designation, the calendar year (*i.e.,* January 1 through December 31) in which manufacturing operations are completed on the vehicle at its place of main assembly.

* * * * *

■ 3. In § 593.5, revise paragraph (b)(2) to read as follows:

§ 593.5 Petitions for eligibility determinations.

* * * * *

(b) * * *

(2) Be headed with the words ''Petition for Import Eligibility Determination'' and submitted in three copies to: Director, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Fourth Floor, Room W43–481, Mail Code NVS–220, 1200 New Jersey Avenue, SE., Washington, DC 20590.

* * * * *

■ 4. In § 593.6, revise paragraph (a)(1) and paragraph (b)(1) to read as follows:

§ 593.6 Basis for petition.

(a) * * *

(1) Identification of the original manufacturer, model, and model year of the vehicle for which a determination is sought, as well as the type classification, as defined by § 571.3 of this chapter, (*e.g.,* passenger car, multipurpose passenger vehicle, bus, truck, motorcycle, trailer, low-speed vehicle) and the gross vehicle weight rating (GVWR) of the substantially similar vehicle which was originally manufactured for importation into and sale in the United States, and which was certified by its manufacturer pursuant to part 567 of this chapter, upon which the petition is based.

* * * * *

(b) * * *

(1) Identification of the model and model year of the vehicle for which a determination is sought, as well as the type classification of the vehicle, as defined by § 571.3 of this chapter (*e.g.,* passenger car, multipurpose passenger vehicle, bus, truck, motorcycle, trailer, low-speed vehicle) and the vehicle's gross vehicle weight rating (GVWR) as identified by the Registered Importer consistent with parts 567 and 571 of this chapter.

* * * * *

Issued on: August 18, 2011.

David L. Strickland,

Administrator.

[FR Doc. 2011–21595 Filed 8–24–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1515, 1520, 1522, 1540, 1544, 1546, 1548, and 1549

[Docket No. TSA–2009–0018; Amendment Nos. 1515–2, 1520–9, 1522–1, 1540–11, 1544–10, 1546–6, 1548–6, 1549–1]

RIN 1652–AA64

Air Cargo Screening; Correction

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule; request for comments; correction.

SUMMARY: The Transportation Security Administration (TSA) is correcting the Air Cargo Screening final rule published in the **Federal Register** on August 18, 2011. The final rule amended two provisions of the Air Cargo Screening interim final rule (IFR) issued on September 16, 2009, proposed a new fee range for security threat assessments, and responded to public comments on the IFR.

DATES: Effective September 19, 2011.

FOR FURTHER INFORMATION CONTACT: Alice Crowe, Senior Counsel, Office of Chief Counsel, TSA–22, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6028; telephone (571) 227 –2652; facsimile (571) 227–1379; e-mail *alice.crowe@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2011, TSA published the Air Cargo Screening final rule in a separate Part III of the **Federal Register** (76 FR 51848). The rule amended two provisions of the Air Cargo Screening IFR issued on September 16, 2009 (74 FR 47672), proposed a new fee range for security threat assessments, and responded to public comments on the IFR. The final rule contained the language ''on airport'' in §§ 1544.205(g)(3) and 1546.205(g)(3), Acceptance and Screening of cargo. This language may be interpreted to not allow an aircraft operator or a foreign air carrier to screen cargo off airport, thus requiring them to become a Certified Cargo Screening Facility (CCSF) to screen cargo off airport for transport on passenger aircraft. This document corrects the final regulations by removing the language ''on airport,'' clarifying that an aircraft operator or foreign air carrier does not have to become a CCSF to screen cargo off airport for transport on a passenger aircraft. The final rule also contained an incorrect citation in the last paragraph of the preamble section ''II. Summary of the Final Rule'' that read ''156.105(c)'' and should have read ''1546.105(c)''. This document corrects the incorrect citation in the preamble.

Correction

In the FR Doc. 20011–20840, published on August 18, 2011 (76 FR 51848), make the following corrections:

1. On page 51850, in the first column, third line from the bottom, in the last paragraph preamble discussion of ''II. Summary of the Final Rule,'' remove the citation ''156.105(c)'' and add in its place, the citation ''1546.105(c)''.

2. On page 51867, in the third column, paragraph (g)(3) under § 1544.205 Acceptance and screening of cargo, is corrected to read as follows:

§ 1544.205 Acceptance and screening of cargo.

* * * * *

(g) * * *

(3) *Limitation on who may conduct screening.* Screening must be conducted by the aircraft operator, by another aircraft operator or foreign air carrier operating under a security program under this chapter with a comparable cargo security program, by a certified cargo screening facility in accordance with 49 CFR part 1549, or by TSA.

* * * * *

3. On page 51868, in the first column, paragraph (g)(3) under § 1546.205 Acceptance and screening of cargo, is corrected to read as follows:

§ 1546.205 Acceptance and screening of cargo.

* * * * *

(g) * * *

(3) *Limitation on who may conduct screening.* Screening must be conducted by the foreign air carrier, by another aircraft operator or foreign air carrier operating under a security program under this chapter with a comparable cargo security program, by a certified cargo screening facility in accordance with 49 CFR part 1549, or by TSA.

* * * * *

Issued in Arlington, Virginia, on August 19, 2011.

Mardi Ruth Thompson,

Deputy Chief Counsel for Regulations.

[FR Doc. 2011–21702 Filed 8–24–11; 8:45 am]

BILLING CODE 9110–05–P

Proposed Rules

Federal Register
Vol. 76, No. 165
Thursday, August 25, 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 HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1213]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before November 23, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1213, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Coos County, New Hampshire (All Jurisdictions)				
Androscoggin River	Approximately 3.5 miles downstream of Meadow Road.	None	+691	City of Berlin, Town of Dummer, Town of Errol, Town of Gorham, Town of Milan, Town of Shelburne, Unincorporated Areas of Coos County.
	At the downstream side of Umbagog Lake Dam	None	+1231	
Clear Stream	At the Androscoggin River confluence	None	+1222	Town of Errol.
	Approximately 1.1 miles upstream of White Mountain Highway.	None	+1227	
Clement Brook	At the Androscoggin River confluence	None	+700	Town of Shelburne.
	Approximately 0.7 mile upstream of U.S. Route 2	None	+752	
Connecticut River	Approximately 0.8 mile downstream of Janice Peaslee Bridge (formerly Maidstone-Stratford Hollow Bridge).	+861	+865	Town of Stratford.
	Approximately 1,180 feet downstream of Janice Peaslee Bridge (formerly Maidstone-Stratford Hollow Bridge).	+864	+865	
Connecticut River	Approximately 2.1 miles upstream of State Route 105	None	+932	Town of Clarksville, Town of Colebrook, Town of Columbia, Town of Stewartstown.
	Approximately 0.6 mile downstream of U.S. Route 3	None	+1106	
Dead River	At the Androscoggin River confluence	+947	+950	City of Berlin.
	Approximately 0.4 mile upstream of Hillside Avenue	+1048	+1049	
Greenough Brook	At the Androscoggin River confluence	None	+1226	Town of Errol.
	At the downstream side of the Akers Pond Dam	None	+1230	
Moose Brook	At the Androscoggin River confluence	+794	+793	Town of Gorham.
	Approximately 840 feet upstream of Jimtown Road	None	+1128	
Moose Brook Split	At the Moose Brook confluence	None	+924	Town of Gorham.
	At the Moose Brook divergence	None	+937	
Moose River	At the Androscoggin River confluence	+786	+787	Town of Gorham.
	Approximately 0.4 mile upstream of Main Street	+831	+830	
Peabody River	At the Androscoggin River confluence	None	+755	Town of Gorham, Town of Shelburne.
	Approximately 1.8 miles upstream of Glen Road	+1054	+1060	
Tinker Brook	At the Androscoggin River confluence	+846	+842	Town of Gorham.
	Approximately 0.9 mile upstream of Main Street	None	+1206	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Berlin
Maps are available for inspection at City Hall, 168 Main Street, Berlin, NH 03570.

Town of Clarksville
Maps are available for inspection at the Town Office, 408 New Hampshire Route 145, Clarksville, NH 03592.

Town of Colebrook
Maps are available for inspection at the Town Hall, 17 Bridge Street, Colebrook, NH 03576.

Town of Columbia
Maps are available for inspection at the Town Hall, 1679 U.S. Route 3, Columbia, NH 03576.

Town of Dummer
Maps are available for inspection at the Town Office, 75 Hill Road, Dummer, NH 03588.

Town of Errol
Maps are available for inspection at the Selectmen's Office, 33 Main Street, Errol, NH 03579.

Town of Gorham
Maps are available for inspection at the Town Hall, 20 Park Street, Gorham, NH 03581.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Town of Milan
Maps are available for inspection at the Municipal Building, 20 Bridge Street, Milan, NH 03588.

Town of Shelburne
Maps are available for inspection at the Town Hall, 74 Village Road, Shelburne, NH 03581.

Town of Stewartstown
Maps are available for inspection at the Stewartstown Town Clerk's Office, 888 Washington Street, West Stewartstown, NH 03597.

Town of Stratford
Maps are available for inspection at the Town Hall, 10 Town Common Road, Stratford, NH 03590.

Unincorporated Areas of Coos County
Maps are available for inspection at the Coos County Commissioner's Office, 136 County Farm Road, West Stewartstown, NH 03597.

Edgecombe County, North Carolina, and Incorporated Areas

Cowlick Creek	At the Tar River confluence	+79	+78	City of Rocky Mount.
	At the Parkers Canal confluence	+80	+79	
Tar River	Approximately 0.5 mile downstream of the Cowlick Creek confluence.	+79	+78	City of Rocky Mount, Unincorporated Areas of Edgecombe County.
	Approximately 1,100 feet downstream of Atlantic Avenue.	+82	+81	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Rocky Mount
Maps are available for inspection at the Planning Department, 331 South Franklin Street, Rocky Mount, NC 27802.

Unincorporated Areas of Edgecombe County
Maps are available for inspection at the Edgecombe County Administration Building, 201 Saint Andrews Street, Tarboro, NC 27886.

Smith County, Texas, and Incorporated Areas

Black Fork Creek	Approximately 0.43 mile upstream of the Prairie Creek West confluence.	None	+380	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 0.71 mile upstream of East 5th Street	+530	+531	
Tributary BF–1	At the Black Fork Creek confluence	+434	+436	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 1.2 miles upstream of Loop 323	None	+476	
Tributary BF–M–1	At the Black Fork Creek confluence	+495	+496	City of Tyler.
	Approximately 1,475 feet upstream of Devine Street	None	+523	
Tributary D	At the Black Fork Creek confluence	+468	+469	City of Tyler.
	Approximately 1,150 feet upstream of Donnybrook Avenue.	None	+541	
Tributary D–1	At the Black Fork Creek Tributary D confluence	+477	+473	City of Tyler.
	Approximately 225 feet upstream of North Broadway Avenue.	None	+511	
Tributary D–2	At the Black Fork Creek Tributary D confluence	+488	+487	City of Tyler.
	Approximately 275 feet upstream of Center Street	None	+508	
Tributary D–3	At the Black Fork Creek Tributary D confluence	+492	+488	City of Tyler.
	Approximately 850 feet upstream of East Houston Street.	None	+512	
Tributary D–4	At the Black Fork Creek Tributary D confluence	None	+527	City of Tyler.
	Approximately 125 feet upstream of 5th Street	None	+576	
Tributary D–5	At the Black Fork Creek Tributary D confluence	None	+541	City of Tyler.
	Approximately 300 feet upstream of West 2nd Street	None	+571	
Butler Creek	Approximately 340 feet upstream of FM 2661	None	+361	City of Tyler, Unincorporated Areas of Smith County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 640 feet upstream of State Route 155	None	+457	
Gilley Creek	Approximately 310 feet downstream of FM 848	None	+379	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 150 feet upstream of University Boulevard.	None	+474	
Tributary G–1	At the Gilley Creek confluence	None	+426	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 1.14 miles upstream of County Road 2120.	None	+478	
Harris Creek	Approximately 300 feet upstream of the Ray Creek confluence.	None	+329	Unincorporated Areas of Smith County.
	Approximately 3.37 miles upstream of State Route 31	None	+468	
Henshaw Creek	At the West Mud Creek confluence	+381	+383	Unincorporated Areas of Smith County.
	Approximately 0.71 mile upstream of County Road 165.	+475	+477	
Indian Creek	Approximately 490 feet upstream of the Lake Palestine confluence.	None	+349	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 0.89 mile upstream of Loop 323	None	+496	
Ray Creek	Approximately 0.37 mile upstream of the Harris Creek confluence.	None	+332	Unincorporated Areas of Smith County.
	Approximately 525 feet upstream of Old Gladwater Highway.	None	+436	
Shackleford Creek	At the West Mud Creek confluence	+380	+383	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 0.75 mile upstream of Paluxy Drive (FM 756).	None	+501	
West Mud Creek	Approximately 200 feet upstream of FM 344 East	+360	+361	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 210 feet upstream of Loop 323	None	+506	
Tributary 11	At the West Mud Creek confluence	+417	+419	City of Tyler.
	Approximately 1,950 feet upstream of Woodlands Drive.	None	+479	
Tributary B	Approximately 125 feet upstream of the West Mud Creek confluence.	+468	+467	City of Tyler.
	Approximately 470 feet upstream of Paluxy Drive	None	+505	
Tributary M–1	At the West Mud Creek Tributary M–A confluence	+442	+444	City of Tyler.
	Approximately 0.54 mile upstream of North Star Boulevard.	+487	+485	
Tributary M–2	Approximately 425 feet upstream of the West Mud Creek confluence.	+464	+463	City of Tyler.
	Approximately 1,510 feet upstream of Barbee Drive	+481	+469	
Tributary M–A	Approximately 200 feet upstream of the West Mud Creek confluence.	+445	+444	City of Tyler.
	Approximately 80 feet upstream of Woodland Hills Drive.	None	+509	
Tributary M–A.1	At the West Mud Creek Tributary M–A confluence	+472	+471	City of Tyler.
	Approximately 160 feet upstream of Charleston Drive	None	+493	
Tributary M–A.2	At the West Mud Creek Tributary M–A confluence	None	+487	City of Tyler.
	Approximately 0.56 mile upstream of Loop 323	None	+532	
Tributary M–C	Approximately 450 feet upstream of the West Mud Creek confluence.	+478	+477	City of Tyler.
	Approximately 75 feet upstream of Azalea Drive	None	+531	
Tributary M–C.1	Approximately 160 feet upstream of the West Mud Creek Tributary M–C confluence.	+489	+488	City of Tyler.
	At the upstream side of Shannon Drive	None	+510	
Tributary M–C.2	At the West Mud Creek Tributary M–C confluence	None	+502	City of Tyler.
	Approximately 1,225 feet upstream of Fair Lane	None	+524	
Wiggins Creek	At the downstream side of the railroad	None	+327	Unincorporated Areas of Smith County.
	Approximately 0.83 mile upstream of Harris Creek Church Road.	None	+373	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Willow Creek	At the Black Fork Creek confluence	+419	+423	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 375 feet upstream of West Front Street	None	+522	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Tyler

Maps are available for inspection at the Development Services Office, 423 West Ferguson Street, Tyler, TX 75702.

Unincorporated Areas of Smith County

Maps are available for inspection at the Smith County Courthouse, 100 North Broadway Avenue, Tyler, TX 75702.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 12, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–21709 Filed 8–24–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2011–0023]

RIN 2137–AE72

Pipeline Safety: Safety of Gas Transmission Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: PHMSA is considering whether changes are needed to the regulations governing the safety of gas transmission pipelines. In particular, PHMSA is considering whether integrity management (IM) requirements should be changed, including adding more prescriptive language in some areas, and whether other issues related to system integrity should be addressed by strengthening or expanding non-IM requirements. Among the specific issues PHMSA is considering concerning IM requirements is whether the definition of a high-consequence area (HCA) should be revised, and whether additional restrictions should be placed on the use of specific pipeline assessment methods. With respect to non-IM requirements, PHMSA is considering whether revised requirements are needed on new construction or existing pipelines concerning mainline valves, including valve spacing and installation of remotely operated or automatically operated valves; whether requirements for corrosion control of steel pipelines should be strengthened; and whether new regulations are needed to govern the safety of gathering lines and underground gas storage facilities. Additional issues PHMSA is considering are addressed in the **SUPPLEMENTARY INFORMATION** Section under background.

DATES: Persons interested in submitting written comments on this ANPRM must do so by December 2, 2011. PHMSA will consider late filed comments as far as practicable.

FOR FURTHER INFORMATION CONTACT: Mike Israni, by telephone at 202–366–4571, by fax at 202–366–4566, or by mail at U.S. DOT, PHMSA, 1200 New Jersey Avenue, SE., PHP–1, Washington, DC 20590–0001.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2011–0023 by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Hand Delivery: U.S. DOT Docket Management System, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard.

Note: Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.* A glossary of terms used in this document can be found at the following Web site: *http://primis.phmsa.dot.gov/comm/.*

SUPPLEMENTARY INFORMATION:

I. Background

Congress has authorized Federal regulation of the transportation of gas by pipeline under the Commerce Clause of the U.S. Constitution. The authorization is codified in the Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*), a series of statutes that are administered by PHMSA. PHMSA promulgated comprehensive minimum safety standards for the transportation of gas by pipeline under the Pipeline Safety

Regulations (PSR; 49 CFR parts 190–199).

Congress established the current framework for regulating natural gas pipelines in the Natural Gas Pipeline Safety Act of 1968, Public Law 90–481, which has since been recodified at 49 U.S.C. 60101 *et seq*. That law delegated to DOT the authority to develop, prescribe, and enforce minimum Federal safety standards for the transportation of gas, including natural gas, flammable gas, or toxic or corrosive gas, by pipeline. Congress has since enacted additional legislation that is currently codified in the Pipeline Safety Laws.

In 1992, Congress required regulations be issued to define the term ''gathering line'' and establish safety standards for certain ''regulated gathering lines.'' In 1996, Congress directed that DOT conduct demonstration projects evaluating the application of risk management principles to pipeline safety regulations, and mandated that regulations be issued for the qualification and testing of certain pipeline personnel.

In 2002, Congress required that DOT issue regulations requiring operators of gas transmission pipelines to conduct risk analyses and to implement IM programs under which pipeline segments in HCAs would be subject to a baseline assessment within ten years and re-assessments at least every seven years. PHMSA administers compliance with these statutes and has promulgated comprehensive safety standards and regulations for the transportation of natural gas by pipeline. That includes regulations for the:

- Design and construction of new pipeline systems or those that have been relocated, replaced, or otherwise changed (subparts C and D of 49 CFR part 192).
- Protection of steel pipelines from the adverse effects of internal and external corrosion (subpart I of 49 CFR part 192).
- Pressure tests of new pipelines (subpart J of 49 CFR part 192).
- Operation and maintenance of pipeline systems, including establishing programs for public awareness and damage prevention, and managing the operation of pipeline control rooms (subparts L and M of 49 CFR part 192).
- Qualification of pipeline personnel (subpart N of 49 CFR part 192).
- Management of the integrity of pipelines in HCAs (subpart O of 49 CFR part 192).

The IM requirements of subpart O of 49 CFR part 192 apply to areas called high consequence areas or HCA's. An integrity management program is a documented set of policies, processes, and procedures that are implemented to ensure the integrity of a pipeline. In accordance with pipeline safety regulations for gas transmission pipelines (subpart O of 49CFR part 192) an operator's integrity management program must include, at a minimum, the following elements:

a. An identification of all high consequence areas;

b. A baseline assessment plan;

c. An identification of threats to each covered pipeline segment, which must include data integration and a risk assessment. An operator must use the threat identification and risk assessment to prioritize covered segments for assessment and to evaluate the merits of additional preventive and mitigative measures for each covered segment;

d. A direct assessment plan, if applicable;

e. Provisions for remediating conditions found during an integrity assessment;

f. A process for continual evaluation and assessment;

g. If applicable, a plan for confirmatory direct assessment meeting the requirement;

h. Provisions for adding preventive and mitigative measures to protect the high consequence area;

i. A performance plan that includes performance measures;

j. Record keeping provisions;

k. A management of change process;

l. A quality assurance process;

m. A communication plan that includes procedures for addressing safety concerns raised by PHMSA or a State or local pipeline safety authority;

n. Procedures for providing (when requested) a copy of the operator's risk analysis or integrity management program to PHMSA or a State or local pipeline safety authority; and

o. Procedures for ensuring that each integrity assessment is being conducted in a manner that minimizes environmental and safety risks;

p. A process for identification and assessment of newly-identified high consequence areas.

A high consequence area is a location that is specially defined in the pipeline safety regulations as an area where pipeline releases could have greater consequences to health and safety or the environment. Regulations require a pipeline operator to take specific steps to ensure the integrity of a pipeline for which a release could affect an HCA and, thereby, the protection of the HCA. The PSR provide gas transmission pipeline operators with two options by which to identify which segments of their pipelines are in HCAs: (1) Reliance on class locations that historically have been part of the pipeline safety regulations for identifying pipelines in more-populated areas, or (2) determining segments for which a specified number of structures intended for human occupation or a so-called identified site (representing areas where people congregate) are located within the potential impact radius of a hypothetical pipeline rupture and subsequent explosion.

Other recent rulemaking have addressed different but related issues relative to pipeline safety. On October 18, 2010 (75 FR 63774) PHMSA published an ANPRM titled ''Pipeline Safety: Safety of On-Shore Hazardous Liquid Pipelines.'' In that rulemaking, PHMSA is considering whether changes are needed to the regulations covering hazardous liquid onshore pipelines. In particular, PHMSA sought comment on whether it should extend regulation to certain pipelines currently exempt from regulation; whether other areas along a pipeline should either be identified for extra protection or be included as additional HCAs for IM protection; whether to establish and/or adopt standards and procedures for minimum leak detection requirements for all pipelines; whether to require the installation of emergency flow restricting devices (EFRDs) in certain areas; whether revised valve spacing requirements are needed on new construction or existing pipelines; whether repair timeframes should be specified for pipeline segments in areas outside the HCAs that are assessed as part of the IM; and whether to establish and/or adopt standards and procedures for improving the methods of preventing, detecting, assessing and remediating stress corrosion cracking (SCC) in hazardous liquid pipeline systems.

On December 4, 2009, PHMSA issued the Distribution Integrity Management Final Rule, which extends the pipeline integrity management principles that were established for hazardous liquid and natural gas transmission pipelines, to the local natural gas distribution pipeline systems. This regulation, which became effective in August of 2011, requires operators of local gas distribution pipelines to evaluate the risks on their pipeline systems, to determine their fitness for service, and to take action to address those risks. For older gas distribution systems, the appropriate mitigation measures could involve major pipe rehabilitation, repair, and replacement programs. At a minimum, these measures are needed to requalify those systems as being fit for service.

II. Advance Notice of Proposed Rulemaking

PHMSA believes that the IM requirements applicable to gas transmission pipelines contained in the Pipeline Safety Regulations (49 CFR parts 190–199) have increased the level of safety associated with the transportation of gas in HCA's. Still, incidents with significant consequences continue to occur on gas transmission pipelines (*e.g.,* incident in San Bruno, CA September 9, 2010). PHMSA has also identified concerns during inspections of gas transmission pipeline operator IM programs that indicate a potential need to clarify and enhance some requirements. PHMSA is now considering whether additional safety measures are necessary to increase the level of safety for those pipelines that are in non-HCA areas as well as whether the current IM requirements need to be revised and enhanced to assure that they continue to provide an adequate level of safety in HCAs.

Within this ANPRM, PHMSA is seeking public comment on 14 specific topic areas in two broad categories.

1. Should IM requirements be revised and strengthened to bring more pipeline mileage under IM requirements and to better assure safety of pipeline segments in HCAs? Specific topics include:

- Modifying the definition of an HCA.
- Strengthening the Integrity Management requirements in part 192.
- Modifying repair criteria.
- Revising the requirements for collecting, validating, and integrating pipeline data.
- Making requirements related to the nature and application of risk models more prescriptive.
- Strengthening requirements for applying knowledge gained through the IM program.
- Strengthening requirements on the selection and use of assessment methods, including prescribing assessment methods for certain threats (such as manufacturing and construction defects, SCC, *etc.*) or in certain situations such as when certain knowledge is not available or data is missing.

2. Should non-IM requirements be strengthened or expanded to address other issues associated with pipeline system integrity? Specific topics include:

- Valve spacing and the need for remotely- or automatically-controlled valves.
- Corrosion control.
- Pipe with longitudinal weld seams with systemic integrity issues.
- Establishing requirements applicable to underground gas storage.
- Management of Change.
- Quality Management Systems (QMS).
- Exemptions applicable to [1] facilities installed prior to the regulations.
- Gathering lines.

Each topic is discussed in more detail in this document.

A. Modifying the Definition of HCA

Part 192 has historically included requirements delineating pipeline segments by class location based on the population density near the pipeline. Class locations are based on the number of buildings intended for human occupancy that exist within a ''class location unit,'' defined as an area extending 220 yards (100 meters) on either side of the centerline of any continuous one-mile (1.6 kilometers) length of pipeline. Class locations are defined in § 192.5 as:

- Class 1—10 or fewer buildings intended for human occupancy within a class location unit.
- Class 2—more than ten but less than 46 buildings intended for human occupancy.
- Class 3—46 or more buildings intended for human occupancy.
- Class 4—any class location unit where buildings with four or more stories are prevalent.

Part 192 provides additional protection for higher class location areas, principally through provisions that require pipe in these higher class locations to operate at lower stress levels.

With the advent of IM requirements, PHMSA introduced a new mechanism in part 192 to define pipeline segments to which additional requirements should apply based on the population at risk in the vicinity of the pipeline. HCAs are defined in § 192.903 using either of two methods. Operators are allowed to pick the method they use to identify their HCAs.

Method 1 builds on the traditional concept of class locations. Under this method, all pipeline segments in Class 3 and 4 locations are within an HCA. In addition, pipeline segments in Class 1 and 2 locations are within an HCA if an ''identified site'' is located within the ''potential impact circle.'' Identified sites are defined as areas in which 20 or more persons congregate for a specified number of days each year or facilities occupied by persons who are confined, of impaired mobility, or would be difficult to evacuate.

Method 2 defines HCAs based solely on potential impact circles. A potential impact circle is an estimated zone in which the failure of a pipeline could have significant impact on people or property. The radius of the potential impact circle is calculated using a formula specified in the regulations that is based on the diameter and operating pressure of the pipeline. A pipeline segment is identified as an HCA if the potential impact circle includes 20 or more buildings intended for human occupancy or an identified site, regardless of class location.

Some gas transmission pipeline operators do not collect data concerning the number of buildings within class location units along their pipeline, but rather design all of their pipelines as though they were in a Class 3 or 4 location. This approach is often used by operators of gas distribution companies that also operate small amounts of pipeline meeting part 192's definition as transmission pipeline. Method 1 was included in the definition of an HCA in deference to these operators, allowing them to avoid the additional costs associated with collecting data on nearby buildings that they have not previously collected. Method 2 was presumed to identify pipeline segments where incidents could produce high consequences more accurately and is typically used by pipeline operators who have collected data on local structures to determine class locations.

PHMSA regulates approximately 297,000 miles of onshore gas transmission pipelines. Of these, approximately 30,300 miles (10.2%) are in Class 2 locations, approximately 33,500 miles (11.3%) are in Class 3 locations, and approximately 1600 miles (0.54%) are in Class 4 locations. Operators have identified approximately 19,000 miles (6.4%) of gas transmission pipeline to be within an HCA.

IM requirements in subpart O of part 192 specify how pipeline operators must identify, prioritize, assess, evaluate, repair and validate; through comprehensive analyses, the integrity of gas transmission pipelines in HCAs. Although operators may voluntarily apply IM practices to pipeline segments that are not in HCAs, the regulations do not require operators to do so.

A gas transmission pipeline ruptured in San Bruno, California on September 9, 2010, resulting in eight deaths and considerable property damage. As a result of this event, public concern has been raised regarding whether safety requirements applicable to pipe in populated areas can be improved. PHMSA is thus considering expanding the definition of an HCA so that more

[1] As described below, these exemptions relate to allowable maximum operating pressure for pipelines that were in service before the initial gas pipeline safety regulations were published. These pipelines are commonly known as ''grandfathered'' pipelines.

miles of pipe are subject to IM requirements.

Questions

A.1. Should PHMSA revise the existing criteria for identifying HCAs to expand the miles of pipeline included in HCAs? If so, what amendments to the criteria should PHMSA consider (*e.g.,* increasing the number of buildings intended for human occupancy in Method 2?) Have improvements in assessment technology during the past few years led to changes in the cost of assessing pipelines? Given that most non-HCA mileage is already subjected to in-line inspection (ILI) does the contemplated expansion of HCAs represent any additional cost for conducting integrity assessments? If so, what are those costs? How would amendments to the current criteria impact state and local governments and other entities?

A.2. Should the HCA definition be revised so that all Class 3 and 4 locations are subject to the IM requirements? What has experience shown concerning the HCA mileage identified through present methods (*e.g.,* number of HCA miles relative to system mileage or mileage in Class 3 and 4 locations)? Should the width used for determining class location for pipelines over 24 inches in diameter that operate above 1000 psig be increased? How many miles of HCA covered segments are Class 1, 2, 3, and 4? How many miles of Class 2, 3, and 4 pipe do operators have that are not within HCAs?

A.3. Of the 19,004 miles of pipe that are identified as being within an HCA, how many miles are in Class 1 or 2 locations?

A.4. Do existing criteria capture any HCAs that, based on risk, do not provide a substantial benefit for inclusion as an HCA? If so, what are those criteria? Should PHMSA amend the existing criteria in any way which could better focus the identification of an HCA based on risk while minimizing costs? If so, how? Would it be more beneficial to include more miles of pipeline under existing HCA IM procedures, or, to focus more intense safety measures on the highest risk, highest consequence areas or something else? If so, why?

A.5. In determining whether areas surrounding pipeline right-of-ways meet the HCA criteria as set forth in part 192, is the potential impact radius sufficient to protect the public in the event of a gas pipeline leak or rupture? Are there ways that PHMSA can improve the process of right-of-ways HCA criteria determinations?

A.6. Some pipelines are located in right-of-ways also used, or paralleling those, for electric transmission lines serving sizable communities. Should HCA criteria be revised to capture such critical infrastructure that is potentially at risk from a pipeline incident?

A.7. What, if any, input and/or oversight should the general public and/or local communities provide in the identification of HCAs? If commenters believe that the public or local communities should provide input and/or oversight, how should PHMSA gather information and interface with these entities? If commenters believe that the public or local communities should provide input and/or oversight, what type of information should be provided and should it be voluntary to do so? If commenters believe that the public or local communities should provide input, what would be the burden entailed in providing provide this information? Should state and local governments should be involved in the HCA identification and oversight process? If commenters believe that state and local governments be involved in the HCA identification and oversight process what would the nature of this involvement be?

A.8. Should PHMSA develop additional safety measures, including those similar to IM, for areas outside of HCAs? If so, what would they be? If so, what should the assessment schedule for non-HCAs be?

A.9. Should operators be required to submit to PHMSA geospatial information related to the identification of HCAs?

A10. Why has the number of HCA miles declined over the years?

A.11. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements pursuant to the commenter's suggestions.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

B. Strengthening Requirements To Implement Preventive and Mitigative Measures for Pipeline Segments in HCAs

Section 192.935 requires gas transmission pipeline operators to take additional measures, beyond those already required by part 192, to prevent a pipeline failure and to mitigate the consequences of a potential failure in an HCA. The additional measures to be taken are not specified. Rather, operators are required to base selection and implementation of these measures on the threats the operator has identified to each pipeline segment. Operators must use their comprehensive risk analyses to identify additional measures appropriate to the HCA. However, the rule establishes no objective criteria by which decisions concerning additional measures must be made, nor does it establish a standard by which such evaluations are to be performed. PHMSA is considering revising the IM requirement to add new requirements governing selection of additional preventive and mitigative measures.

The current regulations state that these additional measures might include: Installing Automatic Shut-off Valves or Remote Control Valves; Installing computerized monitoring and leak detection systems; replacing pipe segments with pipe of heavier wall thickness; providing additional training to personnel on response procedures; conducting drills with local emergency responders; and implementing additional inspection and maintenance programs, but does not require implementation of any of these measures. Operators are also required to enhance their damage prevention programs and to take additional measures to protect HCA segments subject to the threat of outside force damage (non-excavation). Operators are required to install automatic or remotely-operable valves if their risk analysis concludes these would be an efficient means of adding protection to the HCA in the event of a gas release.

The requirements of § 192.935 apply only to pipeline segments in HCAs. As discussed above, only 6.4 percent of gas transmission pipeline mileage is currently classified as ''located within HCAs.'' Revising the criteria for identifying HCAs could, of course, increase the number of pipeline miles to which the requirements of § 192.935 apply. Still, PHMSA is considering whether these requirements, or other requirements for additional preventive and mitigative measures, should apply to pipelines outside of HCAs.

Questions

B.1. What practices do gas transmission pipeline operators now use to make decisions as to whether/which additional preventive and mitigative measures are to be implemented? Are these decisions guided by any industry or consensus standards? If so, what are those industry or consensus standards?

B.2. Have any additional preventive and mitigative measures been voluntarily implemented in response to the requirements of § 192.935? How prevalent are they? Do pipeline operators typically implement specific measures across all HCAs in their pipeline system, or do they target measures at individual HCAs? How many miles of HCA are afforded additional protection by each of the measures that have been implemented? To what extent do pipeline operators implement selected measures to protect additional pipeline mileage not in HCAs?

B.3. Are any additional prescriptive requirements needed to improve selection and implementation decisions? If so, what are they and why?

B.4. What measures, if any, should operators be required explicitly to implement? Should they apply to all HCAs, or is there some reasonable basis for tailoring explicit mandates to particular HCAs? Should additional preventative and mitigative measures include any or all of the following: Additional line markers (line-of-sight); depth of cover surveys; close interval surveys for cathodic protection (CP) verification; coating surveys and recoating to help maintain CP current to pipe; additional right-of-way patrols; shorter ILI run intervals; additional gas quality monitoring, sampling, and in-line inspection tool runs; and improved standards for marking pipelines for operator construction and maintenance and one-calls? If so, why?

B.5. Should requirements for additional preventive and mitigative measures be established for pipeline segments not in HCAs? Should these requirements be the same as those for HCAs or should they be different? Should they apply to all pipeline segments not in HCAs or only to some? If not all, how should the pipeline segments to which new requirements apply be delineated?

B.6. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements pursuant to the commenter's suggestions.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

C. Modifying Repair Criteria

The existing IM regulations establish criteria for the timely repair of injurious anomalies and defects discovered in the pipe (§ 192.933). These criteria apply to pipeline segments in an HCA, but not to segments outside an HCA. PHMSA is considering whether changes are needed to the IM rule related to the repair criteria to provide greater assurance that injurious anomalies and defects are repaired before the defect can grow to a size that leads to a leak or rupture. In addition, PHMSA is considering whether or not to establish repair criteria for pipeline segments located in areas outside an HCA, to provide greater assurance that defects on non-HCA pipeline segments are repaired in a timely manner.

In 2000 and 2002, PHMSA published final rules (65 FR 75378; 12/1/2000 and 67 FR 2136; 1/16/2002) requiring IM Programs for hazardous liquid pipeline operators. In 2003, similar IM regulations were enacted for gas pipelines (68 FR 69778; 12/15/2003). Some 43.9% of the nation's hazardous liquid pipelines (77,421 miles) and 6.5% of the natural gas transmission pipelines (19,004 miles) can potentially affect HCAs and thus receive the enhanced level of integrity assessment mandated by the IM rule. As a result of assessments, over the six-year period between 2004 and 2009, hazardous liquid operators have made 6,419 repairs of anomalies in HCAs that required immediate attention and remediated 25,027 other conditions on a scheduled basis. Between 2004 and 2009, gas pipeline operators have repaired 1,052 anomalies that required immediate attention and 2,239 other conditions. During this six-year period, hazardous liquid pipelines repair rate was 41.3 repairs per 100 HCA miles and gas transmission pipelines repair rate was 17.3 repairs per 100 HCA miles.

The gas IM regulations (§ 192.933) require ''prompt action'' to address all anomalous conditions discovered. More specifically, the IM regulation mandates ''immediate'' pressure reduction, pipeline shutdown, or repair of the following conditions: A predicted failure pressure less than or equal to 1.1 times (≤ 1.1) the established maximum allowable operating pressure (MAOP) at the location of the anomaly; a dent that has any indication of metal loss, cracking, or a stress riser; or any anomaly that in the judgment of the person designated by the operator to evaluate assessment results requires immediate action. Furthermore, operators must repair within one year, smooth dents at the top of the pipeline with a depth greater than six percent of the pipeline diameter and dents with a depth greater than two percent of the pipeline diameter that affect pipe curvature at a girth weld or at a longitudinal seam weld.

The method used to calculate the predicted failure pressure is prescribed in part 192. However, the methods do not account for such factors as inaccurate ILI tool results, low tensile steel strength due to steel property variances, external loads such as caused by soil movement or settlement, or vehicle or farm equipment crossing the pipeline at grade. The IM repair criterion (predicted failure pressures ≤1.1 MAOP) includes a 10% margin between the predicted failure pressure and MAOP. PHMSA is considering if this is adequate to account for the above factors as well as operational factors that allow for the pipeline to operate up to 110% MAOP for brief periods during upset conditions (§§ 192.201 and 192.739).

In addition, regulations at §§ 192.103, 192.105, 192.107, and 192.111 require the usage of class location design factors. The design factor is 0.72 for Class 1 locations. The reciprocal (1.39) can be used to express a failure pressure ratio for sound pipe in a Class 1 location. The failure pressure ratio (FPR) of 1.39 indicates a safety factor over MAOP of 39 percent. This ratio is higher in other class locations (*i.e.,* 1.67 in Class 2, 2.0 in Class 3, and 2.5 in Class 4). PHMSA is considering if class location design factors should be explicitly factored into repair criteria.

The assessments operators have been conducting on pipeline segments in HCAs have often extended to areas beyond the HCAs. PHMSA believes that many repairs have been made outside HCAs as in HCAs due to anomalies identified in these extended assessments, but gas transmission pipeline operators are not required to report these repairs so specific data are not available. Up to now, PHMSA has enforced the IM repair criteria as only applying to the anomalous conditions discovered in the HCAs. If, through the integrity assessment or information

analysis, the operator discovers anomalous conditions in the areas outside the HCA, the pipeline safety regulations require operators to use the prompt remediation requirements in § 192.703 rather than the IM repair criteria. Though the remediation requirements in § 192.703 are more conservative than the IM repair criteria, this difference is off-set by the establishment of repair time frames, increased monitoring of any anomalous conditions, and other safety off-sets. The safety factor associated with the repair criteria in non-HCA is related to the class location design factor. For example, a Class 1 location has a 39% safety factor (1.67 in Class 2, 2.0 in Class 3 and 2.5 in Class 4). PHMSA is now considering whether the IM repair time frames should also be made to apply to the pipeline segments located outside HCAs when anomalous conditions in these areas are discovered through the integrity assessment. This would provide greater assurance that defects on non-HCA pipeline segments are repaired in a timely manner.

Questions

C.1. Should the immediate repair criterion of FPR ≤ 1.1 be revised to require repair at a higher threshold (*i.e.,* additional safety margin to failure)? Should repair safety margins be the same as new construction standards? Should class location changes, where the class location has changed from Class 1 to 2, 2 to 3, or 3 to 4 without pipe replacement have repair criteria that are more stringent than other locations? Should there be a metal loss repair criterion that requires immediate or a specified time to repair regardless of its location (HCA and non-HCA)?

C.2. Should anomalous conditions in non-HCA pipeline segments qualify as repair conditions subject to the IM repair schedules? If so, which ones? What projected costs and benefits would result from this requirement?

C.3. Should PHMSA consider a risk tiering—where the conditions in the HCA areas would be addressed first, followed by the conditions in the non-HCA areas? How should PHMSA evaluate and measure risk in this context, and what risk factors should be considered?

C.4. What should be the repair schedules for anomalous conditions discovered in non-HCA pipeline segments through the integrity assessment or information analysis? Would a shortened repair schedule significantly reduce risk? Should repair schedules for anomalous conditions in HCAs be the same as or different from those in non-HCAs?

C.5. Have ILI tool capability advances resulted in a need to update the ''dent with metal loss'' repair criteria?

C.6. How do operators currently treat assessment tool uncertainties when comparing assessment results to repair criteria? Should PHMSA adopt explicit voluntary standards to account for the known accuracy of in-line inspection tools when comparing in-line inspection tool data with the repair criteria? Should PHMSA develop voluntary assessment standards or prescribe ILI assessment standards including wall loss detection threshold depth detection, probability of detection, and sizing accuracy standards that are consistent for all ILI vendors and operators? Should PHMSA prescribe methods for validation of ILI tool performance such as validation excavations, analysis of as-found versus as-predicted defect dimensions? Should PHMSA prescribe appropriate assessment methods for pipeline integrity threats?

C.7. Should PHMSA adopt standards for conducting in-line inspections using ''smart pigs,'' the qualification of persons interpreting in-line inspection data, the review of ILI results including the integration of other data sources in interpreting ILI results, and/or the quality and accuracy of in-line inspection tool performance, to gain a greater level of assurance that injurious pipeline defects are discovered? Should these standards be voluntary or adopted as requirements?

C.8. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements pursuant to the commenter's suggestions.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

D. Improving Requirements for Collecting, Validating, and Integrating Pipeline Data

IM regulations require that gas transmission pipeline operators gather and integrate existing data and information concerning their entire pipeline that could be relevant to pipeline segments in HCAs (§ 192.917(b)). Operators are then required to use this information in a risk assessment of the covered segments at (§ 192.917(c)) that must subsequently be used to determine whether additional preventive and mitigative measures are needed (§ 192.935) and to define the intervals at which IM reassessments must be performed (§ 192.939). Operators' risk analyses and the conclusions reached using them can only be as good as the information used to perform the analysis.

Preliminary results from the investigation of the September 9, 2010, pipeline rupture and explosion in San Bruno, CA, indicate that the pipeline operator's records concerning the pipe segments involved in the incident were erroneous. The errors affected basic information about the pipeline. For example, the records indicated that pipe in the area was 30-inch diameter seamless pipe, whereas pipe fragments recovered after the incident showed that seamed pipe was present. Thus, analyses performed using the information in the operator's records before the incident could not have led to accurate conclusions concerning risk, whether or not additional preventive and mitigative measures were needed, or what the allowable MAOP should be. PHMSA issued an Advisory Bulletin (76 FR 1504; January 10, 2011) on this issue. PHMSA is considering whether more prescriptive requirements for collecting, validating, integrating and reporting pipeline data is necessary.

Questions

D.1. What practices are now used to acquire, integrate and validate data (*e.g.,* review of mill inspection reports, hydrostatic tests reports, pipe leaks and rupture reports) concerning pipelines? Are practices in place, such as excavations of the pipeline, to validate data?

D.2. Do operators typically collect data when the pipeline is exposed for maintenance or other reasons to validate information in their records? If discrepancies are found, are investigations conducted to determine the extent of record errors? Should these actions be required, especially for HCA segments?

D.3. Do operators try to verify data on pipe, pipe seam type, pipe mechanical and chemical properties, mill inspection reports, hydrostatic tests reports, coating type and condition, pipe leaks and ruptures, and operations and maintenance (O&M) records on a periodic basis? Are practices in place to validate data, such as excavation and *in situ* examinations of the pipeline? If so, what are these practices?

D.4. Should PHMSA make current requirements more prescriptive so operators will strengthen their collection and validation practices necessary to implement significantly improved data integration and risk assessment practices?

D.5. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements pursuant to the commenter's suggestions.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

E. Making Requirements Related to the Nature and Application of Risk Models More Prescriptive

As described above, current regulations require that gas transmission pipeline operators perform risk analyses of their covered segments and use these analyses to make certain decisions concerning actions to assure the integrity of their pipeline and to enhance protection against the consequences of potential incidents. The regulations do not prescribe the type of risk analysis nor impose any requirements regarding its breadth and scope.

PHMSA's experience in inspecting operator compliance with IM requirements has identified that most pipeline operators use a relative index-model approach to performing their risk assessments and that there is a wide range in scope and quality of the resulting analyses. It is not clear that all of the observed risk analyses can support robust decision making and management of the pipeline risk. PHMSA is considering making requirements related to the nature and application of risk models more prescriptive to improve the usefulness of these analyses in informing decisions to control risks from pipelines.

Questions

E.1. Should PHMSA either strengthen requirements on the functions risk models must perform or mandate use of a particular risk model for pipeline risk analyses? If so, how and which model?

E.2. It is PHMSA's understanding that existing risk models used by pipeline operators generally evaluate the relative risk of different segments of the operator's pipeline. PHMSA is seeking comment on whether or not that is an accurate understanding. Are relative index models sufficiently robust to support the decisions now required by the regulation (*e.g.,* evaluation of candidate preventive and mitigative measures, and evaluation of interacting threats)?

E.3. How, if at all, are existing models used to inform executive management of existing risks?

E.4. Can existing risk models be used to understand major contributors to segment risk and support decisions regarding how to manage these contributors? If so, how?

E.5. How can risk models currently used by pipeline operators be improved to assure usefulness for these purposes?

E.6. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements pursuant to the commenters' suggestions.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

F. Strengthening Requirements for Applying Knowledge Gained Through the IM Program

IM assessments provide information about the condition of the pipeline segments assessed. Identified anomalies that exceed criteria in § 192.933 must be remediated immediately (§ 192.933(d)(1)) or within one year (§ 192.933(d)(2)) or must be monitored on future assessments (§ 192.933(d)(3)). Operators are also expected to apply knowledge gained through these assessments to assure the integrity of their entire pipeline.

Section 192.917(e)(5) explicitly requires that operators must consider other portions of their pipeline if an assessment identifies corrosion requiring repair under the criteria of § 192.933. The operator must ''evaluate and remediate, as necessary, all pipeline segments (both covered and non-covered) with similar material coating and environmental characteristics.''

Section 192.917 also requires that operators conduct risk assessments that follow American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) B31.8S, Section 5, and use these analyses to prioritize segments for assessment, and to determine what preventive and mitigative measures are needed for segments in HCAs. Section 5.4 of ASME/ANSI B31.8S states that ''risk assessment methods should be used in conjunction with knowledgeable, experienced personnel * * * that regularly review the data input, assumptions, and results of the risk assessments.'' That Section further states ''An integral part of the risk assessment process is the incorporation of additional data elements or changes to facility data'' and requires that operators ''incorporate the risk assessment process into existing field reporting, engineering, and facility mapping processes'' to facilitate such updates. Neither part 192 nor ASME/ANSI B31.8S specifies a periodicity by which pipeline risk analyses must be reviewed and updated. This is considered a continuous ongoing process.

PHMSA is considering strengthening requirements related to operators' use of insights gained from implementation of its IM program.

Questions

F.1. What practices do operators use to comply with § 192.917(e)(5)?

F.2. How many times has a review of other portions of a pipeline in accordance with § 192.917(e)(5) resulted in investigation and/or repair of pipeline segments other than the location on which corrosion requiring repair was initially identified?

F.3. Do pipeline operators assure that their risk assessments are updated as additional knowledge is gained, including results of IM assessments? If so, how? How is data integration used and how often is it updated? Is data integration used on alignment maps and layered in such a way that technical reviews can identify integrity-related problems and threat interactions? How often should aerial photography and patrol information be updated for IM assessments? If the commenter proposes a time period for updating, what is the basis for this recommendation?

F.4. Should the regulations specify a maximum period in which pipeline risk assessments must be reviewed and validated as current and accurate? If so, why?

F.5. Are there any additional requirements PHMSA should consider to assure that knowledge gained through IM programs is appropriately applied to improve safety of pipeline systems?

F.6. What do operators require for data integration to improve the safety of pipeline systems in HCAs? What is needed for data integration into pipeline knowledge databases? Do operators include a robust database that includes: Pipe diameter, wall thickness, grade, and seam type; pipe coating; girth weld coating; maximum operating pressure (MOP); HCAs; hydrostatic test pressure including any known test failures; casings; any in-service ruptures or leaks; ILI surveys including high resolution—magnetic flux leakage (HR–MFL), HR-geometry/caliper tools; close interval surveys; depth of cover surveys; rectifier readings; test point survey readings; alternating current/direct current (AC/DC) interference surveys; pipe coating surveys; pipe coating and anomaly evaluations from pipe excavations; SCC excavations and findings; and pipe exposures from encroachments?

F.7. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements pursuant to the commenter's suggestions.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

G. Strengthening Requirements on the Selection and Use of Assessment Methods

The existing IM regulations require that baseline and periodic assessments of pipeline segments in an HCA be performed using one of four methods:

(1) In-line inspection;

(2) Pressure test per subpart J;

(3) Direct assessment to address the threats of external and internal corrosion and SCC; or

(4) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of line pipe.

Operators must notify PHMSA in advance if they plan to use ''other technology.'' Operators must apply one or more methods, depending on the threats to which the covered segment is susceptible.

The three specified assessment methods provide different levels of understanding of pipeline integrity. In-line inspection, using modern technology, can provide information concerning small anomalies that can be evaluated and addressed, if needed, before they adversely affect pipeline integrity. In-line inspection, with appropriate selection of tools, is capable of detecting many types of anomalies including corrosion, dents and deformation, selective seam corrosion and other seam issues, and SCC. Pressure testing provides no information about the existence of anomalies that do not result in leaks or failures during the pressure test. Pressure tests are conducted at a pressure higher than MAOP to afford a safety margin between MAOP and a pressure at which failure might occur. Direct assessment can identify conditions (*e.g.,* coating holidays, presence of water in the gas stream) that could lead to degradation and, through related excavations and direct examination, knowledge of whether such degradation is occurring in the locations examined. Direct assessment is not a satisfactory assessment technology to identify or characterize threats such as material or construction defects other than coating holidays, unless it is used with other non-destructive exam technologies that conduct a full pipe and weld body examination.

Standards for conducting pressure tests are specified in subpart J of part 192 and minimum pressures for these tests can be found at §§ 192.505, 192.507, 192.619, 192.620. Standards for external corrosion direct assessment (ECDA) are specified in § 192.925 and in National Association of Corrosion Engineers (NACE) NACE RP0502–2008 (incorporated by reference). Standards for internal corrosion direct assessment (ICDA) and SCC direct assessment (SCCDA) are in §§ 192.927 and 192.929 respectively, but in neither case is a consensus standard incorporated as is the case for ECDA. Standards for in-line inspection are not specified in the regulations.

PHMSA is considering strengthening the requirements for selection and use of assessment methods.

Questions

G.1. Have any anomalies been identified that require repair through various assessment methods (*e.g.,* number of immediate and total repairs per mile resulting from ILI assessments, pressure tests, or direct assessments)?

G.2. Should the regulations require assessment using ILI whenever possible, since that method appears to provide the most information about pipeline conditions? Should restrictions on the use of assessment technologies other than ILI be strengthened? If so, in what respect? Should PHMSA prescribe or develop voluntary ILI tool types for conducting integrity assessments for specific threats such as corrosion metal loss, dents and other mechanical damage, longitudinal seam quality, SCC, or other attributes?

G.3. Direct assessment is not a valid method to use where there are pipe properties or other essential data gaps. How do operators decide whether their knowledge of pipeline characteristics and their confidence in that knowledge is adequate to allow the use of direct assessment?

G.4. How many miles of gas transmission pipeline have been modified to accommodate ILI inspection tools? Should PHMSA consider additional requirements to expand such modifications? If so, how should these requirements be structured?

G.5. What standards are used to conduct ILI assessments? Should these standards be incorporated by reference into the regulations? Should they be voluntary?

G.6. What standards are used to conduct ICDA and SCCDA assessments? Should these standards be incorporated into the regulations? If the commenter believes they should be incorporated into the regulations, why? What, if any, remediation, hydrostatic test or replacement standards should be incorporated into the regulations to address internal corrosion and SCC?

G.7. Does NACE SP0204–2008 (formerly RP0204), ''Stress Corrosion Cracking Direct Assessment Methodology'' address the full lifecycle concerns associated with SCC?

G.8. Are there statistics available on the extent to which the application of NACE SP0204–2008, or other standards, have affected the number of SCC indications operators have detected and remediated on their pipelines?

G.9. Should a one-time pressure test be required to address manufacturing and construction defects?

G.10. Have operators conducted quality audits of direct assessments to determine the effectiveness of direct assessment in identifying pipeline defects?

G.11. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests

commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements pursuant to the commenter's suggestions.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

H. Valve Spacing and the Need for Remotely or Automatically Controlled Valves

Gas transmission pipelines are required to incorporate sectionalizing block valves. These valves can be used to isolate a section of the pipeline for maintenance or in response to an incident. Valves are required to be installed at closer intervals in areas where the population density near the pipeline is higher. Section 192.179 requires that block valves be located such that:

''(1) Each point on the pipeline in a Class 4 location must be within 2½ miles (4 kilometers) of a valve.

(2) Each point on the pipeline in a Class 3 location must be within 4 miles (6.4 kilometers) of a valve.

(3) Each point on the pipeline in a Class 2 location must be within 7½ miles (12 kilometers) of a valve.

(4) Each point on the pipeline in a Class 1 location must be within 10 miles (16 kilometers) of a valve.''

These requirements apply to initial gas transmission pipeline construction. If population increases after a pipeline is placed in service, such that the class location changes, operators must reduce pressure, conduct pressure tests or verify the adequacy of prior pressure tests, or replace the pipeline to allow continued operation at the existing pressure. If operators replace the pipeline, then § 192.13(a)(1) would require that the new pipeline be ''designed, installed, constructed, initially inspected, and initially tested in accordance with this part,'' including the requirements for valve spacing. If operators reduce pressure or verify that prior pressure tests are sufficient to justify continued operation without reducing pressure or replacing the pipeline, then no current regulation would require that new valves be installed to comply with the spacing requirements in § 192.179.

Sectionalizing block valves are not required to be remotely operable or to operate automatically in the event of an unexpected reduction in pressure (*e.g.,* from a pipeline rupture). Congress has previously required PHMSA to ''assess the effectiveness of remotely controlled valves to shut off the flow of natural gas in the event of a rupture'' and to require use of such valves if they were shown technically and economically feasible.[2] The National Transportation Safety Board (NTSB) has also issued a number of recommendations concerning requirements for use of automatic or remotely operated mainline valves, including one following a 1994 pipeline rupture in Edison, NJ.[3] PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA) conducted the Congressionally-mandated evaluation and concluded that remotely and automatically controlled mainline valves are technically feasible but not, on a generic basis, economically feasible.[4] Nevertheless, IM regulations require that an operator must install an automatic or remotely operated valve if the operator determines, based on a risk analysis, that these would be an efficient means of adding protection to a HCA in the event of a gas release (§ 192.935(c)). In publishing this regulation, PHMSA acknowledged its prior conclusion that installation of these valves was not economically feasible but noted that this was a generic conclusion. PHMSA stated that it did not expect operators to re-perform the generic analyses but rather to ''evaluate whether the generic conclusions are applicable to their HCA pipeline segments.'' [5]

The incident in San Bruno, CA on September 9, 2010, has raised public concern about the ability of pipeline operators to isolate sections of gas transmission pipelines in the event of an accident promptly and whether remotely or automatically operated valves should be required to assure this. PHMSA is considering changes to its requirements for sectionalizing block valves in response to these concerns.

Questions

H.1. Are the spacing requirements for sectionalizing block valves in § 192.179 adequate? If not, why not and what should be the maximum or minimum separation distance? When class locations change as a result of population increases, should additional block valves be required to meet the new class location requirements? Should a more stringent minimum spacing of either remotely or automatically controlled valves be required between compressor stations? Under what conditions should block valves be remotely or automatically controlled? Should there be a limit on the maximum time required for an operator's maintenance crews to reach a block valve site if it is not a remotely or automatically controlled valve? What projected costs and benefits would result from a requirement for increased placement of block valves?

H.2. Should factors other than class location be considered in specifying required valve spacing?

H.3. Should the regulations be revised to require explicitly that new valves must be installed in the event of a class location change to meet the spacing requirements of § 192.179? What would be the costs and benefits associated with such a change?

H.4. Should the regulations require addition of valves to existing pipelines under conditions other than a change in class location?

H.5. What percentage of current sectionalizing block valves are remotely operable? What percentage operate automatically in the event of a significant pressure reduction?

H.6. Should PHMSA consider a requirement for all sectionalizing block valves to be capable of being controlled remotely?

H.7. Should PHMSA strengthen existing requirements by adding prescriptive decision criteria for operator evaluation of additional valves, remote closure, and/or valve automation? Should PHMSA set specific guidelines for valve locations in or around HCAs? If so, what should they be?

H.8. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements pursuant to the commenter's suggestions.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.

[2] Accountable Pipeline Safety and Partnership Act of 1996, Public Law 104–304.

[3] NTSB, ''*Texas Eastern Transmission Corporation Natural Gas Pipeline Explosion and Fire, Edison, New Jersey, March 23, 1994,*'' PB95–916501, NTSB/PAR–95/01, January 18, 1995.

[4] DOT, RSPA, ''*Remotely Controlled Valves on Interstate Natural Gas Pipelines, (Feasibility Determination Mandated by the Accountable Pipeline Safety and Partnership Act of 1996),* September 1999.

[5] **Federal Register**, December 15, 2003, 68 FR 69798, column 3.

• The potential environmental impacts of modifying the existing regulatory requirements.

I. Corrosion Control

Gas transmission pipelines are generally constructed of steel pipe, and corrosion is a threat of potential concern. Requirements for corrosion control of gas transmission pipelines are in subpart I of part 192. This subpart includes requirements related to external corrosion, internal corrosion, and atmospheric corrosion. However, this subpart does not include requirements for the specific threat of SCC.

Buried pipelines installed after July 31, 1971, are required to have a protective coating and CP unless the operator can demonstrate that the pipeline is not in a corrosive environment. Buried pipelines installed before that date must have CP if they have an effective coating or, if bare or with ineffective coating, if active corrosion is found to exist. Appendix D of part 192 provides standards for the adequacy of CP and operators are required to conduct tests periodically to demonstrate that these standards are met.

These requirements have proven effective in minimizing the occurrence of incidents caused by gas transmission pipeline corrosion. Many of the provisions in subpart I, however, are general. They provide, for example, that each pipeline under CP ''have sufficient test stations or other contact points for electrical measurement to determine the adequacy of CP'' (§ 192.469) rather than specifying the number or spacing of such test stations. Operators are required to take ''prompt'' remedial action to address problems with CP (§ 192.465(d)), but ''prompt'' is not defined. In addition, the regulations do not now include provisions addressing issues that experience has shown can be important to protecting pipelines from corrosion damage:

• Surveying post-construction for coating damage, using techniques such as direct current voltage gradient (DCVG) or alternating current voltage gradient (ACVG). Experience has shown that construction activities can damage coating and that identifying and remediating these damages can help protect against corrosion damage.

• Performing a post-construction close interval survey to assess the adequacy of CP and inform the location of CP test stations.

• Conducting periodic interference current surveys to detect and address electrical currents that could reduce the effectiveness of CP. Pipelines are often routed near, in parallel to, or in common right-of-ways with, electrical transmission lines that can induce such interference currents. Section 192.473 requires operators of pipelines subject to stray currents to have a program to minimize detrimental effects but does not require surveys, grounding mitigation, or provide any criteria for determining the adequacy of such programs.

• Requiring periodic use of an In-line Inspection Tool or sampling of accumulated liquids to assure that internal corrosion is not occurring.

PHMSA is considering revising subpart I to address these areas and to improve the specificity of existing requirements.

Corrosion control regulations applicable to gas transmission pipelines include no requirements relative to SCC. SCC is cracking induced from the combined influence of tensile stress and a corrosive medium. SCC has been a contributing factor in numerous pipeline failures on hazardous liquids pipelines including a 2003 failure on a Kinder Morgan pipeline in Arizona, a 2004 failure on an Explorer Pipeline Company pipeline in Oklahoma, a 2005 failure on an Enterprise Products Operating line in Missouri, and a 2008 failure on an Oneok Natural Gas Liquids Pipeline in Iowa. More effective methods of preventing, detecting, assessing and remediating SCC in pipelines are important to making further reductions in pipeline failures.

PHMSA is seeking to improve understanding and mitigation of SCC threat. To this end, PHMSA is considering whether to establish and/or adopt standards and procedures, through a rulemaking proceeding, for improving the methods of preventing, detecting, assessing and remediating SCC. PHMSA is considering additional requirements to perform periodic coating surveys at compressor discharges and other high-temperature areas potentially susceptible to SCC.

PHMSA has taken numerous steps over many years to improve the understanding and mitigation of SCC in pipelines. These have included public workshops and studies on SCC. Initiatives taken, sponsored and/or supported by PHMSA designed to enhance understanding of SCC include:

• 1999 and 2004 SCC Studies—Two comprehensive studies on SCC were conducted for PHMSA's predecessor agency. First, ''Stress Corrosion Cracking Study,'' Report No. DTRS56, prepared by General Physics Corporation in May 1999. Second, ''Stress Corrosion Cracking Study,'' Report No. DTRS56–02–D–70036, submitted by Michael Baker Jr., Inc., in September 2004. These studies sought to improve understanding of SCC and to identify practical methods to prevent, detect and address SCC as well as provide a framework for potential future research. The first report noted that SCC accounted for only 1.5 percent of gas transmission pipeline incidents in the U.S., but 17 percent of incidents in Canada. The report concluded this disparity is not due to some inherent difference in U.S. and Canadian pipelines, but rather, due to the far greater occurrence of third party damage incidents in the U.S. The 2004 study is available at *http://primis.phmsa.dot.gov/meetings/DocHome.mtg?doc=1.*

• Gas Transmission IM Rule—The gas transmission IM rule (68 FR 69778; December 15, 2003) requires operators to consider at least the potential threats listed in Section 2 of ASME/ANSI B31.8S, which includes SCC. The rule also specifies requirements for use of SCC direct assessment as a method of assessing gas transmission pipelines susceptible to this threat, which also require the use of criteria in ASME/ANSI B31.8S. The standard, however, addresses only high-pH SCC. Experience has shown that SCC occurring at near-neutral conditions is also a potential threat to gas transmission pipelines.

• 2003 Advisory Bulletin—In response to three SCC-driven failures of hazardous liquid pipelines in the U.S. in 2003 and other SCC incidents around the world, PHMSA issued an Advisory Bulletin, ''Stress Corrosion Cracking Threats to Gas and Hazardous Liquid Pipelines'' (68 FR 58166; October 8, 2003), urging all pipeline owners and operators to consider SCC as a possible safety risk on their pipeline systems and to include SCC assessment and remediation in their IM plans, for those systems subject to IM rules. For systems not subject to the IM rules, the bulletin urged owners and operators to assess the impact of SCC on pipeline integrity and to plan integrity verification activities accordingly.

• 2003 Public Workshop—PHMSA sponsored a public workshop on SCC on December 3, 2003, in Houston, Texas. Numerous PHMSA representatives, state officials, industry, consultants and officials from the National Energy Board of Canada attended and shared their respective experiences with SCC. The workshop also served as a forum for identifying issues for consideration in the 2004 Baker SCC study.

• 2005 Rulemaking—PHMSA issued rules that covered direct assessment, a process of managing the effects of

external corrosion, internal corrosion or SCC on pipelines made primarily of steel or iron. ''Standards for Direct Assessment of Gas and Hazardous Liquid Pipelines'' (70 FR 61571; October 25, 2005).

Questions

Existing Standards

I.1. Should PHMSA revise subpart I to provide additional specificity to requirements that are now presented in general terms, as described above? If so, which sections should be revised? What standards exist from which to draw more specific requirements?

I.2. Should PHMSA prescribe additional requirements for post-construction surveys for coating damage or to determine the adequacy of CP? If so, what factors should be addressed (*e.g.,* pipeline operating temperatures, coating types, *etc.*)?

I.3. Should PHMSA require periodic interference current surveys? If so, to which pipelines should this requirement apply and what acceptance criteria should be used?

I.4. Should PHMSA require additional measures to prevent internal corrosion in gas transmission pipelines? If so, what measures should be required?

I.5. Should PHMSA prescribe practices or standards that address prevention, detection, assessment, and remediation of SCC on gas transmission pipeline systems? Should PHMSA require additional surveys or shorter IM survey internals based upon the pipeline operating temperatures and coating types?

I.6. Does the NACE SP0204–2008 (formerly RP0204) Standard ''Stress Corrosion Cracking Direct Assessment Methodology'' address the full lifecycle concerns associated with SCC? Should PHMSA consider this, or any other standards to govern the SCC assessment and remediation procedures? Do these standards vary significantly from existing practices associated with SCC assessments?

I.7. Are there statistics available on the extent to which the application of the NACE Standard, or other standards, have affected the number of SCC indications operators have detected on their pipelines and the number of SCC-related pipeline failures? Are statistics available that identify the number of SCC occurrences that have been discovered at locations that meet the screening criteria in the NACE standard and at locations that do not meet the screening criteria?

I.8. If new standards were to be developed for SCC, what key issues should they address? Should they be voluntary?

I.9. Does the definition of corrosive gas need to clarify that other constituents of a gas stream (*e.g.,* water, carbon dioxide, sulfur and hydrogen sulfide) could make the gas stream corrosive? If so, why does it need to be clarified?

I.10. Should PHMSA prescribe for HCAs and non-HCAs external corrosion control survey timing intervals for close interval surveys that are used to determine the effectiveness of CP?

I.11. Should PHMSA prescribe for HCAs and non-HCAs corrosion control measures with clearly defined conditions and appropriate mitigation efforts? If so, why?

Existing Industry Practices

PHMSA is interested in the extent to which operators have implemented Canadian Energy Pipeline Association (CEPA) SCC, Recommended Practices 2nd Edition, 2007, and what the results have been.

I.12. Are there statistics available on the extent to which gas transmission pipeline operators apply the CEPA practices?

I.13. Are there statistics available that compare the number of SCC indications detected and SCC-related failures between operators applying the CEPA practices and those applying other SCC standards or practices?

I.14. Do the CEPA practices address the full lifecycle concerns associated with SCC? If not, which are not addressed?

I.15. Are there additional industry practices that address SCC?

The Effectiveness of SCC Detection Tools and Methods

I.16. Are there statistics available on the extent to which various tools and methods can accurately and reliably detect and determine the severity of SCC?

I.17. Are tools or methods available to detect accurately and reliably the severity of SCC when it is associated with longitudinal pipe seams?

I.18. Should PHMSA require that operators perform a critical analysis of all factors that influence SCC to determine if SCC is a credible threat for each pipeline segment? If so, why? What experience-based indications have proven reliable in determining whether SCC could be present?

I.19. Should PHMSA require an integrity assessment using methods capable of detecting SCC whenever a credible threat of SCC is identified?

I.20. Should PHMSA require a periodic analysis of the effectiveness of operator corrosion management programs, which integrates information about CP, coating anomalies, in-line inspection data, corrosion coupon data, corrosion inhibitor usage, analysis of corrosion products, environmental and soil data, and any other pertinent information related to corrosion management? Should PHMSA require that operators periodically submit corrosion management performance metric data?

I.21. Are any further actions needed to address corrosion issues?

I.22. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements pursuant to the commenter's suggestions.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

J. Pipe Manufactured Using Longitudinal Weld Seams

Most gas transmission pipelines are constructed of steel pipe. The steel pipe is formed into pipe from steel plate, coil, or billet. The natural gas pipeline infrastructure in the United States is comprised of approximately 322,000 miles of transmission pipeline. Approximately 182,000 (56%) miles of gas transmission pipelines were built prior to 1970 and approximately 140,000 miles (44%) were built after 1970.

Pipelines built since the regulations (49 CFR part 192) were implemented in early 1971 have been required to be:

- Pressure tested after construction and prior to being placed into gas service in accordance with subpart J, and
- Manufactured in accordance with a referenced standard (most gas transmission pipe has been manufactured in accordance with American Petroleum Institute (API) API Standard 5L, 5LX or 5LS, ''Specification for Line Pipe'' (API 5L) referenced in 49 CFR part 192).

Many gas transmission pipelines built from the 1940's through 1970 were manufactured in accordance with API 5L, but may not have been pressure tested similar to a subpart J pressure test. These pipelines built prior to 1971 were allowed by § 192.619(a) to operate

to an MAOP based on the highest five-year operating pressure prior to July 1, 1970, in lieu of a pressure test. (See section N, below, for a discussion of these exemptions.) Some of these old processes created pipe with variable characteristics throughout the longitudinal weld or pipe body.

Starting in the late-1960's, many pipe seam types used for the pre-1970's pipe have been discontinued as new modern steel making and pipe rolling practices were implemented. New steel and pipe manufacturing technology has led to new processes, the modification or improvement of some processes, and the abandonment of others. Many pipe manufacturing processes that produced pipe with longitudinal seam deficiencies have been discontinued such as low frequency electric resistance welded (LF–ERW), direct current electric resistance welded (DC–ERW), flash welded, furnace butt welded, and lap welded pipe.

As a result of 12 hazardous liquid pipeline failures that occurred during 1986 and 1987 involving pre-1970 ERW pipe, PHMSA issued an Alert Notice (ALN–88–01). Subsequent to the notice, one additional failure on a gas transmission pipeline, and eight additional failures on hazardous liquid pipelines, resulted in another Alert Notice (ALN–89–01). The notices identified that some failures appeared to be due to selective seam corrosion, but that other failures appeared to have resulted from flat growth of manufacturing defects in the ERW seam. In these notices, PHMSA advised all gas transmission and hazardous liquid pipeline operators with pre-1970 ERW pipe to:

- Consider hydrostatic testing on all hazardous liquid pipelines that have not been hydrostatically tested to 125% of the maximum allowable pressure, or alternatively reduce the operating pressure 20%;
- Avoid increasing a pipeline's long-standing operating pressure;
- Assure the effectiveness of the CP system. Consider the use of close interval pipe-to-soil surveys after evaluating the pipe coating and corrosion/CP history; and
- In the event of an ERW seam failure, conduct metallurgical examinations in order to determine the probable condition of the remainder of the ERW seams in the pipeline.

The rule for gas transmission pipeline IM prescribed the following specific requirements, for pipe in HCAs, consistent with the recommendations in ALN–89–01:

- Avoiding increasing a pipeline's long-standing operating pressure,
- If a pipeline's long-standing operating pressure is exceeded, or if stresses leading to cyclic fatigue increases, conduct an integrity assessment capable of detecting manufacturing and construction defects, including seam defects,
- Conduct an evaluation to determine if the pipeline is susceptible to manufacturing and construction defects, including seam defects. The evaluation must consider both covered segments and similar non-covered segments, past incident history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, internal inspection records and all other conditions specific to each pipeline.

In 2003, PHMSA also commissioned a study [6] of low frequency ERW and lap welded longitudinal seam issues. The study was conducted by Michael Baker, Inc., in collaboration with Kiefner and Associates, Inc., and CorrMet Engineering Services, PC. The study provided suggested guidelines that can be used to create policy for longitudinal seam testing.

Since 2002, there have been at least 22 reportable incidents on gas transmission pipeline which manufacturing or seam defects were contributing factors. Due to recent high consequence incidents caused by longitudinal seam failures, including the 2009 failure in Palm City, Florida and the 2010 failure in San Bruno, California, PHMSA is considering additional IM and pressure testing requirements for pipe manufactured using longitudinal seam welding techniques that have not had a subpart J pressure test.

Questions

J.1. Should all pipelines that have not been pressure tested at or above 1.1 times MAOP or class location test criteria (§§ 192.505, 192.619 and 192.620), be required to be pressure tested in accordance with the present regulations? If not, should certain types of pipe with a pipeline operating history that has shown to be susceptible to systemic integrity issues be required to be pressure tested in accordance with the present regulations (*e.g.,* low-frequency electric resistance welded (LF–ERW), direct current electric resistance welded (DC–ERW), lap-welded, electric flash welded (EFW), furnace butt welded, submerged arc welded, or other longitudinal seams)? If so, why?

J.2. Are alternative minimum test pressures (other than those specified in subpart J) appropriate, and why?

J.3. Can ILI be used to find seam integrity issues? If so, what ILI technology should be used and what inspection and acceptance criteria should be applied?

J.4. Are other technologies available that can consistently be used to reliably find and remediate seam integrity issues?

J.5. Should additional pressure test requirements be applied to all pipelines, or only pipelines in HCAs, or only pipelines in Class 2, 3, or 4 location areas?

J.6. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements pursuant to the commenter's suggestions.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

K. Establishing Requirements Applicable to Underground Gas Storage

Demand for natural gas fluctuates seasonally and sometimes based on other factors. Gas transmission pipeline operators use underground storage facilities as a means of accommodating these fluctuations. Gas is injected into storage during periods of low demand and is withdrawn for delivery to customers when demand is high. Underground storage facilities include caverns, many in salt formations, and related wells and piping to inject and remove gas. Underground storage caverns and injection/withdrawal piping are not currently regulated under part 192. Pipelines that transport gas within a storage field are defined at § 192.3 as transmission pipelines and are regulated in the same manner as other transmission pipelines.

NTSB conducted an investigation subsequent to an accident involving uncontrolled release of highly volatile liquids from a salt dome storage cavern in Brenham, Texas in 1992 and

[6] *TTO Number 5, IM Delivery Order DTRS56–02–D–70036, Low Frequency ERW and Lap Welded Longitudinal Seam Evaluation,* Final Report, Revision 3, April 2004, available online at: *http://primis.phmsa.dot.gov/iim/docstr/TTO5_LowFrequencyERW_FinalReport_Rev3_April2004.pdf.*

recommended that DOT develop safety requirements for underground storage of highly volatile liquids and natural gas. RSPA initiated a rulemaking proceeding as a result of this recommendation. Following a period of study, RSPA concluded that Federal regulation of underground gas storage was not necessary and terminated that rulemaking. RSPA described this action in an Advisory Bulletin published in the **Federal Register** on July 10, 1997 (ADB–97–04, 62 FR 37118).

RSPA noted that most persons who spoke at a public meeting held as part of the rulemaking proceeding favored industry safety practices and state regulation to address safety of underground storage. RSPA commissioned a report that found that about 85 percent of surveyed storage facilities were under state regulation, to at least some degree. RSPA also noted that it had worked with the Interstate Oil and Gas Compact Commission (IOGCC) to develop standards for underground storage, which were published in a report titled: ''Natural Gas Storage in Salt Caverns—A Guide for State Regulators'' (IOGCC Guide). RSPA also noted that the API had published two sets of guidelines for underground storage of liquid hydrocarbons: API RP 1114, ''Design of Solution-Mined Underground Storage Facilities,'' June 1994, and API RP 1115, ''Operation of Solution-Mined Underground Storage Facilities,'' September 1994. RSPA encouraged operators of underground storage facilities and state regulators to use these resources in their safety programs.

A significant incident involving an underground gas storage facility occurred in 2001 near Hutchinson, KS. An uncontrolled release from an underground gas storage facility resulted in explosions and fires. Two people were killed. Many residents were evacuated from their homes. Some were not able to return for four months.

The Kansas Corporation Commission initiated enforcement action against the operator of the Hutchinson storage field as a result of safety violations associated with the accident. As part of this enforcement proceeding, it was concluded that the storage field was an interstate gas pipeline facility. Federal statutes provide that ''[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation'' (49 U.S.C. § 60104). There were, and remain, no Federal safety standards against which enforcement could be taken. The enforcement proceeding was therefore terminated.

PHMSA is considering establishing requirements within part 192 applicable to underground gas storage to help assure safety of underground storage and to provide a firm basis for safety regulation. PHMSA notes that the IOGCC Guide is no longer available on the IOGCC Web site. The API documents were both updated in July, 2007 (the latter redesignated as API 1115).

Questions

K.1. Should PHMSA develop Federal standards governing the safety of underground gas storage facilities? If so, should they be voluntary? If so, what portions of the facilities should be addressed in these standards?

K.2. What current standards exist governing safety of these facilities? What standards are presently used for conducting casing, tubing, isolation packer, and wellbore communication and wellhead equipment integrity tests for down-hole inspection intervals? What are the repair and abandonment standards for casings, tubing, and wellhead equipment when communication is found or integrity is compromised?

K.3. What standards are used to monitor external and internal corrosion?

K.4. What standards are used for welding, pressure testing, and design safety factors of casing and tubing including cementing and casing and casing cement integrity tests?

K.5. Should wellhead values have emergency shutdowns both primary and secondary? Should there be integrity and O&M intervals for key safety and CP systems?

K.6. What standards are used for emergency shutdowns, emergency shutdown stations, gas monitors, local emergency response communications, public communications, and O&M Procedures?

K.7. Does the current lack of Federal standards and preemption provisions in Federal law preclude effective regulation of underground storage facilities by States?

K.8. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

L. Management of Change

Experience has shown that changes to physical configuration or operational practices often cause problems in the pipeline and other industries. Operation of a pipeline over an extended period without change tends to ''shake out'' minor issues and lead to their resolution. Ineffectively managed changes to pipeline systems (*e.g.,* pipeline equipment, computer equipment or software used to monitor and control the pipeline) or to practices used to construct, operate, and maintain those systems can lead to difficulties. Changes can introduce unintended consequences because the change was not well thought out or was implemented in a manner not consistent with its design or planning. Changes in procedures require people to perform new or different actions, and failure to train them properly and in a timely manner can result in unexpected consequences. The result can be a situation in which risk or the likelihood of an accident is increased. A recently completed but poorly-designed modification to the pipeline system was a factor contributing to the Olympic Pipeline accident in Bellingham, Washington.

PHMSA pipeline safety regulations do not now address management process subjects such as management of change. PHMSA is considering adding requirements in this area to provide a greater degree of control over this element of pipeline risk.

Questions

L.1. Are there standards used by the pipeline industry to guide management processes including management of change? Do standards governing the management of change process include requirements for IM procedures, O&M manuals, facility drawings, emergency response plans and procedures, and documents required to be maintained for the life of the pipeline?

L.2. Are standards used in other industries (*e.g.,* Occupational Safety and Health Administration standards at 29 CFR 1910.119) appropriate for use in the pipeline industry?

L.3. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements.

• The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
• The potential impacts on small businesses of modifying the existing regulatory requirements.
• The potential environmental impacts of modifying the existing regulatory requirements.

M. Quality Management Systems (QMS)

International Standards Organization (ISO) standard ISO 8402–1986 defines quality as ''the totality of features and characteristics of a product or service that bears its ability to satisfy stated or implied needs.''

Quality management includes the activities and processes that an organization uses to achieve quality. These include formulating policy, setting objectives, planning, quality control, quality assurance, performance monitoring, and quality improvement.

Achieving quality is critical to gas transmission pipeline design, construction, and operations. PHMSA recognizes that pipeline operators strive to achieve quality, but our experience has shown varying degrees of success in accomplishing this objective among pipeline operators. PHMSA believes that an ordered and structured approach to quality management can help pipeline operators achieve a more consistent state of quality and thus improve pipeline safety.

PHMSA's pipeline safety regulations do not now address process management issues such as QMS. Section 192.328 requires a quality assurance plan for construction of pipelines intended to operate at alternative MAOP, but there is no similar requirement applicable to other pipelines. Quality assurance is generally considered to be an element of quality management. PHMSA is considering whether and how to impose requirements related to QMS, especially their design and application to control equipment and materials used in new construction (*e.g.,* quality verification of materials used in construction and replacement, post-installation quality verification), and to control the work product of contractors used to construct, operate, and maintain the pipeline system (*e.g.,* contractor qualifications, verification of the quality of contractor work products).

Questions

M.1. What standards and practices are used within the pipeline industry to assure quality? Do gas transmission pipeline operators have formal QMS?

M.2. Should PHMSA establish requirements for QMS? If so, why? If so, should these requirements apply to all gas transmission pipelines and to the complete life cycle of a pipeline system?

M.3. Do gas transmission pipeline operators require their construction contractors to maintain and use formal QMS? Are contractor personnel that construct new or replacement pipelines and related facilities already required to read and understand the specifications and to participate in skills training prior to performing the work?

M.4. Are there any standards that exist that PHMSA could adopt or from which PHMSA could adapt concepts for QMS?

M.5. What has been the impact on cost and safety in other industries in which requirements for a QMS have been mandated?

M.6. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:
• The potential costs of modifying the existing regulatory requirements.
• The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
• The potential impacts on small businesses of modifying the existing regulatory requirements.
• The potential environmental impacts of modifying the existing regulatory requirements.

N. Exemption of Facilities Installed Prior to the Regulations

Federal pipeline safety regulations were first established with the initial publication of part 192 on August 19, 1970. Gas transmission pipelines had existed for many years prior to this, some dating to as early as 1920. Many of these older pipelines had operated safely for years at pressures higher than would have been allowed under the new regulations. To preclude a required reduction in the operating pressure of these pipelines, which the agency believed would not have resulted in a material increase in safety; an exemption was included in the regulations allowing pipelines to operate at the highest actual operating pressure to which they were subjected during the five years prior to July 1, 1970.[7] Safe operation at these pressures was deemed to be evidence that operation could safely continue. This exemption is still in part 192, at § 192.619(a)(3). It has been modified to accommodate later changes that redefined some onshore gathering pipelines as transmission pipelines, allowing the MAOP for those pipelines similarly to be established at the highest actual pressure experienced in the five years before the redefinition.

Many exempt gas transmission pipelines continue to operate in the United States. Some of these pipelines operate at stress levels higher than 72 percent specified minimum yield strength (SMYS), the highest level generally allowed for more modern gas transmission pipelines. Some operate at greater than 80 percent SMYS, the alternate MAOP allowed for some pipelines by regulations adopted October 17, 2008 (72 FR 62148). Under these regulations, operators who seek to operate their pipelines at up to 80 percent SMYS (in Class 1 locations) voluntarily accept significant additional requirements applicable to design, construction, and operation of their pipeline and intended to assure quality and safety at these higher operating stresses. Exempt pipelines are subject to none of these additional requirements.

Exempt pipelines that continue to operate at higher pressures (stress levels) than the regulations would currently allow are now 40 years older than they were when part 192 was initially promulgated. In many cases, this is more than double the operating lifetime they had accumulated at that time. Time is an important factor in assuring pipeline safety. Pipelines are subject to various time-dependent degradation mechanisms including corrosion, fatigue, and other potential causes of failure. Pipeline operators manage these mechanisms, and many are addressed by regulations in part 192.

Part 192 also includes several provisions other than establishment of MAOP for which an accommodation was made in the initial part 192. These provisions allowed pipeline operators to use steel pipe that had been manufactured before 1970 and did not meet all requirements applicable to pipe manufactured after part 192 became effective § 192.55), valves, fittings and components that did not contain all the markings required § 192.63), and pipe which had not been transported under the standard included in the new part 192 (192.65, subject to additional testing requirements). These provisions allowed pipeline operators to use materials that they had purchased prior to the effective date of the new regulations and which they maintained on hand for repairs, replacements and new installations.

PHMSA is considering changes to its regulations that would eliminate these

[7] The pipelines that operate at MAOP determined under this exemption are commonly referred to as ''grandfathered'' pipelines.

exemptions. PHMSA expects that materials that had been warehoused prior to 1970 have all been used in the intervening years or, if not, are no longer suitable for use. PHMSA is considering repealing the provisions that allow use of such older materials. PHMSA is considering eliminating the exemption of § 192.619(a)(3) for establishing MAOP. This would have the effect of requiring a reduction in the operating pressure for some older gas transmission pipelines to levels applicable to pipelines constructed since 1970.

Questions

N.1. Should PHMSA repeal provisions in part 192 that allow use of materials manufactured prior to 1970 and that do not otherwise meet all requirements in part 192?

N.2. Should PHMSA repeal the MAOP exemption for pre-1970 pipelines? Should pre-1970 pipelines that operate above 72% SMYS be allowed to continue to be operated at these levels without increased safety evaluations such as periodic pressure tests, in-line inspections, coating examination, CP surveys, and expanded requirements on interference currents and depth of cover maintenance?

N.3. Should PHMSA take any other actions with respect to exempt pipelines? Should pipelines that have not been pressure tested in accordance with subpart J be required to be pressure tested in accordance with present regulations?

N.4. If a pipeline has pipe with a vintage history of systemic integrity issues in areas such as longitudinal weld seams or steel quality, and has not been pressure tested at or above 1.1 times MAOP or class location test criteria (§§ 192.505, 192.619 and 192.620), should this pipeline be required to be pressure tested in accordance with present regulations?

N.5. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

O. Modifying the Regulation of Gas Gathering Lines

In the Natural Gas Pipeline Safety Act of 1968, Congress gave DOT broad authority to develop, prescribe, and enforce minimum Federal safety standards for the transportation of gas by pipeline.[8] That authority did not extend to the gathering of gas in rural areas, which Congress concluded should not be subject to Federal regulation.[9]

In 1970, DOT issued its original Federal safety standards for the transportation of gas by pipeline.[10] Those standards did not apply to the gathering of gas in rural areas and defined a ''gathering line'' as ''a pipeline that transports gas from a current production facility to a transmission line or main.''

In 1974, DOT issued a notice of proposed rulemaking (NPRM) to change its definition of a gas gathering line.[11] The NPRM noted that the original definition had ''creat[ed] a vicious circle,'' both in terms of determining where a gathering line begins and a transmission line ends and where a production facility ends and a gathering line begins. Nonetheless, DOT withdrew the NPRM four years later without taking any final action.[12]

In the Pipeline Safety Act (PSA) of 1992,[13] Congress gave DOT the discretion to override the traditional prohibition on the regulation of rural gathering lines. Specifically, the PSA provided DOT with the authority to issue safety standards for ''regulated gathering lines,'' based on the functional and operational characteristics of those lines and subject to certain additional conditions. In the Accountable Pipeline Safety and Partnership Act of 1996, Congress made clear that DOT had the authority to obtain information from the owners and operators of gathering lines to determine whether those lines should be subject to Federal safety standards.[14]

In March 2006, PHMSA issued new safety requirements for ''regulated onshore gathering lines.'' [15] Those requirements established a new method for determining if a pipeline is an onshore gathering line, divided regulated onshore gas gathering lines into two risk-based categories (Type A and Type B), and subjected such lines to certain safety standards.

Onshore gas gathering lines are defined based on the provisions in American Petroleum Institute Recommended Practice 80, ''Guidelines for the Definition of Onshore Gas Gathering Lines,'' (API RP 80), a consensus industry standard incorporated by reference. Additional regulatory requirements for determining the beginning and endpoints of gathering are also imposed to prevent operator manipulation and abuse.

Type A gathering lines are metallic lines with a MAOP of 20% or more of SMYS, as well as nonmetallic lines with an MAOP of more than 125 psig, in a Class 2, 3, or 4 location. These lines are subject to all of the requirements in part 192 that apply to transmission lines, except for § 192.150, the regulation that requires the accommodation of smart pigs in the design and construction of certain new and replaced pipelines, and the Integrity Management requirements of part 192, subpart O. Operators of Type A gathering lines are also permitted to use an alternative process for demonstrating compliance with the requirements of part 192, subpart N, Qualification of Pipeline Personnel.

Type B gathering lines are metallic lines with an MAOP of less than 20% of SMYS, as well as nonmetallic lines with an MAOP of 125 psig or less, in a Class 2 location (as determined under one of three formulas) or in a Class 3 or Class 4 location. These lines are subject to less stringent requirements than Type A gathering lines; specifically, any new or substantially changed Type B line must comply with the design, installation, construction, and initial testing and inspection requirements applicable to transmission lines and, if of metallic construction, the corrosion control requirements for transmission lines. Operators must also include Type B gathering lines in their damage prevention and public education programs, establish the MAOP of those lines under § 192.619, and comply with the requirements for maintaining and installing line markers that apply to transmission lines.

Recent developments in the field of gas exploration and production, such as shale gas, indicate that the existing framework for regulating gas gathering lines may no longer be appropriate.

[8] Public Law 90–481, 82 Stat. 720 (1968) (currently codified with amendments at 49 U.S.C. 60101 *et seq.*).

[9] H.R. REP. NO. 1390 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3223, 3234–35.

[10] 35 FR 317, 318, 320 (Jan. 8, 1970); 35 FR 13248, 13258 (Aug. 19, 1970).

[11] 39 FR 34569 (Sept. 26, 1974).

[12] 43 FR 42773 (Sept. 21, 1978).

[13] Public Law 102–508, 106 Stat. 3289 (Oct. 24, 1992) (currently codified at 49 U.S.C. 60101(b)). In 1991, DOT had issued another NPRM to change the definitions for gathering line and production facility and to add a new term, ''production field,'' into the gas pipeline safety regulations. 56 FR 48505 (Sept. 25, 1991).

[14] Public Law 104–304, § 12, 110 Stat. 3793 (Jan. 3, 1996) (currently codified at 49 U.S.C. 60117(b)).

[15] 71 FR 13289 (Mar. 15, 2006).

Gathering lines are being constructed to transport ''shale'' gas that range from 12 to 36 inches in diameter with an MAOP of 1480 psig, far exceeding the historical operating parameters of such lines. Current estimates also indicate that there are approximately 230,000 miles of gas gathering lines in the U.S., and that PHMSA only regulates about 20,150 miles of those lines. Moreover, enforcement of the current requirements has been hampered by the conflicting and ambiguous language of API RP 80, a complex standard that can produce multiple classifications for the same pipeline system. PHMSA has also identified a regulatory gap that permits the potential abuse of the incidental gathering line designation under that standard.

Questions

O.1. Should PHMSA amend 49 CFR part 191 to require the submission of annual, incident, and safety-related conditions reports by the operators of all gathering lines?

O.2. Should PHMSA amend 49 CFR part 192 to include a new definition for the term ''gathering line''?

O.3. Are there any difficulties in applying the definitions contained in RP 80? If so, please explain.

O.4. Should PHMSA consider establishing a new, risk-based regime of safety requirements for large-diameter, high-pressure gas gathering lines in rural locations? If so, what requirements should be imposed?

O.5. Should PHMSA consider short sections of pipeline downstream of processing, compression, and similar equipment to be a continuation of gathering? If so, what are the appropriate risk factors that should be considered in defining the scope of that limitation (*e.g.* doesn't leave the operator's property, not longer than 1000 feet, crosses no public rights-of-way)?

O.6. Should PHMSA consider adopting specific requirements for pipelines associated with landfill gas systems? If so, what regulations should be adopted and why? Should PHMSA consider adding regulations to address the risks associated with landfill gas that contains higher concentrations of hydrogen sulfide and/or carbon dioxide?

O.7. Internal corrosion is an elevated threat to gathering systems due to the composition of the gas transported. Should PHMSA enhance its requirements for internal corrosion control for gathering pipelines? Should this include required cleaning on a periodic basis?

O.8. Should PHMSA apply its Gas Integrity Management Requirements to onshore gas gathering lines? If so, to what extent should those regulations be applied and why?

O.9. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.

The potential environmental impacts of modifying the existing regulatory requirements.

IV. Regulatory Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' We therefore request comments, including specific data if possible, concerning the costs and benefits of revising the pipeline safety regulations to accommodate any of the changes suggested in this advance notice.

B. Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. PHMSA is inviting comments on the effect a possible rulemaking adopting any of the amendments discussed in this document may have on the relationship between national government and the states.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), PHMSA must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if adoption of any of the amendments discussed in this ANPRM could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected and whether there are alternative approaches to this regulations the agency should consider that would minimize any significant impact on small business while still meeting the agency's statutory objectives.

D. National Environmental Policy Act

The National Environmental Policy Act of 1969 requires Federal agencies to consider the consequences of Federal actions and that they prepare a detailed statement analyzing them if the action significantly affects the quality of the human environment. Interested parties are invited to address the potential environmental impacts of this ANPRM. We are particularly interested in comments about compliance measures that would provide greater benefit to the human environment or on alternative actions the agency could take that would provide beneficial impacts.

E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian Tribal Government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We invite Indian Tribal governments to provide comments on any aspect of this ANPRM that may affect Indian communities.

F. Paperwork Reduction Act

Under 5 CFR part 1320, PHMSA analyzes any paperwork burdens if any information collection will be required by a rulemaking. We invite comment on the need for any collection of information and paperwork burdens, if any.

G. Privacy Act Statement

Anyone can search the electronic form of comments received in response to 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.*). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477).

Authority: 49 U.S.C. 60101 *et seq.*; 49 CFR 1.53.

Issued in Washington, DC, on August 18, 2011.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2011–21753 Filed 8–24–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0131]

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking; School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking from the Center for Auto Safety (CAS) and 21 others asking that NHTSA mandate the installation of three-point seat belts (lap/shoulder belts) for all seating positions on all school buses. We are denying the petition because we have not found a safety problem supporting a Federal requirement for lap/shoulder belts on large school buses, which are already very safe. The decision to install seat belts on school buses should be left to State and local jurisdictions, which can weigh the need for, benefits and consequences of installing belts on large school buses and best decide whether their particular pupil transportation programs merit installation of the devices.

FOR FURTHER INFORMATION CONTACT: For legal issues: Ms. Deirdre Fujita, Office of the Chief Counsel, NCC–112, phone (202) 366–2992. For non-legal issues: Ms. Shashi Kuppa, Office of Crashworthiness Standards, NVS–113, phone (202) 366–3827. You can reach both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Overview

This document denies a petition for rulemaking from the CAS and others [1] (hereinafter referred to as the ''CAS petition'') asking NHTSA to mandate the installation of three-point seat belts (lap/shoulder belt) for all seating positions on large school buses.[2]

Federal Motor Vehicle Safety Standard (FMVSS) No. 222, ''School bus passenger seating and crash protection,'' requires lap/shoulder belts for all seating positions on small school buses, and requires that passengers on large school buses be protected through a concept called ''compartmentalization.'' [3] The deceleration experienced by small school buses necessitates installation of the belts for adequate occupant crash protection. For large school buses, we have determined there is not a safety problem warranting national action to require the addition of lap/shoulder belts to these vehicles. Large school buses are very safe due to their greater weight and higher seating height than most other vehicles, high visibility to motorists, and occupant protection through compartmentalization. The vehicles have compiled an excellent safety record.

In considering the issue of seat belts for large school buses, NHTSA has been mindful that a requirement for seat belts could affect funding for school transportation. A Federal requirement for seat belts on large school buses will increase the cost to purchase and operate the vehicles, which would impact school budgets. Increased costs to purchase and operate large school buses could reduce the availability of school bus service overall, and reduce school bus ridership. The reduced ridership may result in more students finding alternative, less safe means of getting to or from school or related events, such as riding in private vehicles—often with a teenage driver. When alternative means are used, the risk of traffic-related injury or fatality to children is greater than when a large school bus is used.

As such, there are many factors to be weighed in deciding whether seat belts should be installed on large school buses. Throughout the past 34 years that compartmentalization and the school bus safety standards have been in effect, the agency has openly and continuously considered the merits of a seat belt requirement for large school buses. (See, *e.g.*, responses to petitions to require seat belt anchorages and seat belt assemblies, 41 FR 28506 (July 12, 1976) and 48 FR 47032 (October 17, 1983); response to petition for rulemaking to prohibit the installation of lap belts on large school buses, 71 FR 40057 (July 14, 2006).)

Most recently, NHTSA discussed the issue of requiring seat belts on large school buses at length in a rulemaking proceeding completed in 2010 (Regulation Identifier Number (RIN) 2127–AK09) (NPRM upgrading school bus passenger crash protection, 72 FR 65509 (November 21, 2007); final rule, 73 FR 62744 (October 21, 2008)); (RIN 2127–AK49) response to petitions for reconsideration, 75 FR 66686 (October 29, 2010)). NHTSA undertook the rulemaking to raise the minimum seat back height on school bus passenger seats, require small school buses to have lap/shoulder belts at each passenger seating position (the small buses were previously required to provide at least lap belts [4]), and incorporate test procedures to test lap/shoulder belts in small school buses and voluntarily-installed lap/shoulder belts in large school buses. The test procedures ensure both the strength of the seat belt systems and the compatibility of the

[1] The petition, dated March 9, 2010 on CAS letterhead, described itself as from the following groups and individuals in addition to the CAS: the National Coalition for School Bus Safety, Public Citizen, Consumers for Auto Reliability and Safety, Consumers Union, *KidsandCars.org,* Advocates for Highway and Auto Safety, Consumer Federation of America, SafetyBeltSafe U.S.A., the Trauma Foundation, the American Academy of Pediatrics (AAP), the American Association of Orthopaedic Surgeons, the Orthopaedic Trauma Association, 2safeschools.org, Safe Ride News, the Advocacy Institute for Children, Belt Up School Kids, the Coalition for Child Safety, Nancy Bauder, Lynn Brown/Rhea Vogel, Ruth Spaulding, and Norm Cherkis.

[2] ''School bus'' is defined in 49 CFR 571.3 as a bus that is sold, or introduced in interstate commerce, for purposes that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation. A ''bus'' is a motor vehicle, except a trailer, designed for carrying more than 10 persons. In this document, when we refer to ''large'' school buses, we refer to school buses with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (kg) (10,000 pounds (lb)). These large school buses may transport as many as 90 students. ''Small'' school buses are school buses with a GVWR of 4,536 kg (10,000 lb) or less. Generally, these small school buses seat 15 persons or fewer, or have one or two wheelchair seating positions.

[3] Compartmentalization is a protective envelope formed of strong, closely spaced seats that have energy absorbing seat backs so that passengers are cushioned and contained by the seat in front in the event of a school bus crash. Compartmentalization is described more fully in the next section of this denial notice.

[4] Small school buses are different from large ones in that they are built on the same chassis and frame as a light truck and thereby have similar crash characteristics of a light truck. The upgraded seat belt requirements (from lap belts to lap/shoulder belts) on these vehicles reflects the similar upgrade to lap/shoulder belts in other passenger vehicles.

seat belt systems with compartmentalization.

In that rulemaking, the agency presented up-to-date information and discussed the reasoning behind the agency's decision not to propose to require seat belts in large school buses. The NPRM and final rule preambles presented data and findings from the following studies of the National Transportation Safety Board (NTSB), National Academy of Sciences (NAS), and NHTSA (in chronological order):

Studies

• *NTSB, 1987*

In 1987, the NTSB reported on its investigation of forty-three post-standard school bus crashes.[5] The NTSB concluded that most fatalities and injuries in school bus crashes occurred because the occupant seating positions were directly in line with the crash forces, and that seat belts would not have prevented those injuries and fatalities. (NTSB/SS–87/01, Safety Study, Crashworthiness of Large Post-standard School Buses, March 1987, National Transportation Safety Board.)

• *NAS, 1989*

A 1989 NAS study concluded that the overall potential benefits of requiring seat belts on large school buses were insufficient to justify a Federal mandate for installation. The NAS also stated that funds used to purchase and maintain seat belts might be better spent on other school bus safety programs with the potential to save more lives and reduce more injuries. (Special Report 222, Improving School Bus Safety, National Academy of Sciences, Transportation Research Board, Washington, DC 1989).

• *NTSB, 1999*

In 1999, the NTSB reported on six school bus crashes it investigated in which passenger fatalities or serious injuries occurred away from the area of vehicle impact. The NTSB found compartmentalization to be an effective means of protecting passengers in school bus crashes. However, because many of those passengers injured in the six crashes were believed to have been thrown from their compartments, the NTSB believed other means of occupant protection should be examined. (NTSB/SIR–99/04, Highway Safety Report, Bus Crashworthiness Issues, September 1999, National Transportation Safety Board).

• *NAS, 2002*

In 2002, the NAS published a study that analyzed the safety of various transportation modes used by school children to get to and from school and school-related activities. The NAS found that among 815 school-age children killed in motor vehicle crashes during normal school travel hours each year, less than 0.6 percent are passengers in school buses, 1.8 percent are children outside the bus near the loading/unloading zone, 22 percent are students walking/bicycling, and 75 percent are in crashes involving passenger vehicles, especially those with teen drivers. The report stated that changes in any one characteristic of school travel can lead to dramatic changes in the overall risk to the student population. Thus, the NAS concluded, it is important for school transportation decisions to take into account all potential aspects of any changes in school transportation. (Special Report 269, ''The Relative Risks of School Travel: A National Perspective and Guidance for Local Community Risk Assessment,'' Transportation Research Board of the National Academies, 2002.)

• *NHTSA, 2002*

In 2002, NHTSA issued a report to Congress detailing school bus occupant safety and analyzing options for improvement. NHTSA concluded that compartmentalization effectively lowered injury measures by distributing crash forces with the padded seating surface. Lap belts showed little to no benefit in reducing serious/fatal injuries. The agency determined that properly used lap/shoulder belts have the potential to be effective in reducing fatalities and injuries for not only frontal collisions, but also rollover crashes where seat belt systems are particularly effective in reducing ejection. However, the addition of lap/shoulder belts on buses would increase capital costs and reduce seating capacity on the buses. (''Report to Congress, School Bus Safety: Crashworthiness Research, April 2002,'' *http://www.nhtsa.gov/DOT/NHTSA/NRD/Multimedia/PDFs/Crashworthiness/SchoolBus/SBReportFINAL.pdf*.)

In addition, the agency considered the public discussions at a July 11, 2007 roundtable meeting with State and local government policymakers, school bus and seat manufacturers, pupil transportation associations, and consumer groups. (Notice of public meeting, 72 FR 30739, June 4, 2007, Docket NHTSA–2007–28103.)

The agency explained in the NPRM and final rule preambles of the documents comprising RIN 2127–AK09 that, after considering all available information, NHTSA was not able to conclude that requiring seat belts on large school buses would protect passengers against an unreasonable risk of death or injury in an accident. NHTSA continued: ''Whether the same conclusion can be made by a State or local jurisdiction is a matter for local decision-makers and we encourage them to make the decisions most appropriate for their individual needs to most safely transport their students to and from school.'' *Id.* 73 FR at 62745.

Following publication of the final rule, CAS *et al.* submitted the petition for rulemaking discussed today to require lap/shoulder belts on large school buses. The petition refers to a ''Highway Accident Brief'' published November 12, 2009 by the NTSB.

Also following publication of the final rule, the State of Alabama completed a comprehensive study to evaluate the merits of having lap/shoulder belts on newly purchased large school buses in Alabama. Among other factors, the State evaluated the rate of seat belt use, the effects on bus discipline, the attitudes of other stakeholders, the loss of capacity attributable to seat belts, and cost effectiveness of requiring lap/shoulder seat belts. The study found that, for Alabama, the cost and consequences of ordering the seat belts on large school buses would exceed the benefit. The authors concluded that if funding is to be spent on school bus safety, more lives could be saved in Alabama by investing in enhanced safety measures in loading/unloading zones.

Additionally, following publication of the final rule, NHTSA completed an estimate of possible impacts that reduced school bus ridership might have on traffic-related injury or fatality. This analysis is discussed later in this document. The agency undertook the analysis to understand, in a more comprehensive manner, the possible consequences of a national requirement for seat belts on large school buses. If a national requirement were imposed, how could such a requirement affect the availability of school bus service? How might reduced availability of school bus service impact pupil transportation safety? The analysis is illustrative in nature and is based on established economic methodologies. Under the described conditions, the agency estimates that the increased risk from students finding alternative, less safe means of getting to and from school could result in an increase of 10 to 19 school transportation fatalities annually.

After carefully considering the petition for rulemaking and all the above information, the agency is denying the petition.

The agency notes that part of the response repeats some discussion from the November 21, 2007 NPRM and the October 21, 2008 final rule comprising

[5] FMVSS No. 222 became effective on April 1, 1977.

RIN 2127–AK09, *supra*. The discussion is set forth again here because it is relevant, particularly because a large part of the petitioners' ''facts which it is claimed establish that an order is necessary'' [6] are not new, having been previously raised to the agency and to which NHTSA has responded. The agency is repeating some of the discussion set forth in the November 21, 2007 NPRM and the October 21, 2008 final rule for completeness, and to provide a context for discussion of the petition.

Discussion

Introduction

School buses are one of the safest forms of transportation in the United States. Every year, approximately 485,500 school buses travel approximately 4.2 billion miles to transport 23 million children to and from school and school-related activities.[7] The school bus occupant fatality rate of 0.23 fatalities per 100 million vehicle miles traveled (VMT) is nearly 6 times lower than the rates for passenger cars (1.29 per 100 million VMT [8]). The safety of current school buses was confirmed by NAS in 2002.[9]

The agency estimates that an average of 19 school-age children die in school bus-related traffic crashes [10] each year: 5 are occupants of school buses and 14 are pedestrians near the loading/unloading zone of the school bus.[11] These numbers do not include school-age children who are killed going to or from school using means other than by school buses.

The CAS petition cited an American Association of Pediatrics (AAP) analysis of the National Electronic Injury Surveillance System (NEISS). The AAP analysis indicated that there are 17,000 school bus-related nonfatal injuries annually, among which 7,200 were crash related, 4,060 were during boarding/alighting, 1,160 were slips/fall related, 860 were non-crash related, and 3,750 were of other/unknown cause. Among those injured in this study, 97 percent were treated and released from the hospital. Most of these injuries were of minor severity (strains, sprains, and bruises).

We agree with the petitioners that school bus crashes are an important public health priority. Due to regulation in this area and public interest in the safety of school buses, school buses are very safe vehicles. The Motor Vehicle and School Bus Safety Amendments of 1974, which amended the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act), directed NHTSA to issue motor vehicle safety standards applicable to school buses and school bus equipment. In response to this legislation, NHTSA revised several of its safety standards to improve existing requirements for school buses, extended ones for other vehicle classes to those buses, and issued new safety standards exclusively for school buses. FMVSS No. 222 was promulgated to improve protection to school bus passengers during crashes and sudden driving maneuvers.

Effective since 1977, FMVSS No. 222 contains occupant protection requirements for school bus seating positions and restraining barriers. Its requirements for school buses with GVWRs of 4,536 kilogram (kg) (10,000 pound (lb)) or less differ from those set for school buses with GVWRs greater than 4,536 kg (10,000 lb), because the ''crash pulse,'' or deceleration, experienced by the small school buses is more severe than that of the large buses in similar collisions. For the small school buses, the standard includes requirements that all seating positions must be equipped with properly installed seat belts for passengers. NHTSA decided that seat belts were necessary on small school buses to provide adequate crash protection for the occupants.

For large school buses, FMVSS No. 222 relies on requirements for ''compartmentalization'' to provide passenger crash protection. Investigations of school bus crashes prior to issuance of FMVSS No. 222 found the school bus seat was a significant factor in causing injury. NHTSA found that the seat failed the passengers in three principal respects: By being too weak, too low, and too hostile (39 FR 27584; July 30, 1974). In response to this finding, NHTSA developed a set of requirements which comprise the compartmentalization system.

Compartmentalization ensures that passengers are cushioned and contained by the seats in the event of a school bus crash by requiring school bus seats to be positioned in a manner that provides a compact, protected area surrounding each seat. If a seat is not compartmentalized by a seat back in front of it, compartmentalization must be provided by a padded and protective restraining barrier. The seats and restraining barriers must be strong enough to maintain their integrity in a crash yet flexible enough to be capable of deflecting in a manner which absorbs the energy of the occupant. They must meet specified height requirements and be constructed, by use of substantial padding or other means, so that they provide protection when they are impacted by the head and legs of a passenger. Compartmentalization minimizes the hostility of the crash environment and limits the range of movement of an occupant. The compartmentalization approach ensures that high levels of crash protection are provided to each passenger independent of any action on the part of the occupant to buckle up.

Nonetheless, throughout the past 34 years that compartmentalization and the school bus safety standards have been in effect, the agency has openly and continuously considered the consequences, pros and cons, of a seat belt requirement for large school buses. The most recent detailed discussion of the issue was in NHTSA's October 21, 2008 final rule.

October 21, 2008 Final Rule

On October 21, 2008, the agency issued a final rule, *supra,* upgrading the passenger protection requirements for school buses. The NPRM preceding the final rule discussed the agency's considerations when we drafted the NPRM as to whether to propose requiring lap/shoulder belts in large school buses. We considered whether Federal enhancements on an already very safe vehicle were reasonable and appropriate, given the low safety need [12] and especially when the cost of installing and maintaining lap/shoulder belts on the buses could impact the ability of transportation providers to transport children to or from school or spend funds in other areas affecting pupil safety. After considering that large school buses were already very safe, and

[6] 49 CFR 552.4(c), Requirements for petition for rulemaking.

[7] Based on the 2006–07 school year, ''School Bus Fleet, 2009 Fact Book,'' page 30.

[8] 2008 Traffic Safety Facts FARS/GES Annual Report, *http://www-nrd.nhtsa.dot.gov/Pubs/811170.pdf.*

[9] National Academy of Sciences, Special Report 269: The Relative Risks of School Travel: A National Perspective and Guidance for Local Community Risk Assessment, National Research Council, Washington, DC, September 2002.

[10] A school bus-related crash is a crash which involves, either directly or indirectly, a school bus body vehicle (*e.g.*, a yellow school bus), or a non-school bus functioning as a school bus (*e.g.* a transit bus functioning as a school bus), transporting children to or from school or school-related activities.

[11] School Transportation-Related Crashes, Traffic Safety Facts 2008 Data, DOT HS 811 165.

[12] As indicated earlier, among 19 school-age child fatalities in school transportation-related crashes each year, 5 are passengers of school buses while 14 are killed outside the school bus at or near the loading/unloading zone, by motorists passing the bus or by the school bus itself. Children inside the bus are typically killed in crashes when they are in the direct zone of intrusion of the impacting vehicle or object, in such circumstances seat belts will not be effective in preventing the fatality.

after considering the possibility that seat belts on large school buses could affect school bus service and ridership, NHTSA decided not to propose to require lap/shoulder belts on large school buses.

The agency estimated the benefit that seat belts in large school buses may offer in frontal, side, and rollover crashes. For frontal crashes, we estimated the benefits of seat belts by using the sled test data obtained from NHTSA's 2002 school bus safety study. For estimating the incremental benefits of seat belts in rollover and side crashes, the agency used the effectiveness estimates of 74 percent for rollover crashes and 21 percent for side crashes attributed to seat belts in passenger cars.[13] We estimated that lap/shoulder seat belts would save about 2 lives per year and prevent about 1,900 crash injuries, of which 97 percent are of minor/moderate severity (mainly cuts and bruises), assuming every child wore them correctly on every trip.

The agency estimated that the incremental cost of installing lap/shoulder belts on a new 45-inch school bus seat to be $467–$599 and that on a 30-inch seat to be $375–$487. The incremental cost of newer seat designs that minimize any loss in seating capacity due to seat belts was estimated to be within these cost ranges. Assuming that an average large school bus has 11 rows of seats with 2 seats per row, we estimated the incremental cost of installing lap/shoulder belts in large school buses to be $5,485–$7,346. (This cost does not include added fuel costs to operate the buses, which would increase due to the added weight from the seat belt system and different school bus seats.) The benefits would be achieved at a cost of between $23 and $36 million per equivalent life saved. (This estimate of cost per equivalent life saved did not factor in increased fuel costs or the effect of the loss in seating capacity.)

After considering all available information, NHTSA was not able to conclude that there exists an unreasonable risk of death or injury in an accident that justified an FMVSS requirement for seat belts on large school buses.[14] Aside from the fact that large school buses were already very safe, real world data showed that fatalities and injuries occurring in school bus loading/unloading zones, and fatalities and injuries associated with other school transportation modes (walking, biking, transporting in private vehicles), are significantly higher than those occurring in the school bus. The agency determined that a Federal requirement for seat belts to address fatalities and injuries on large school buses would not be appropriate since large school buses were very safe and the cost of such a requirement would likely impact the monies available to local jurisdictions to use toward their pupil transportation programs. The greater cost to buy and operate a school bus with seat belts may reduce the number of school buses available for pupil transportation and divert the limited school transportation funds away from important safety programs, such as driver and pupil training on safe loading/unloading practices.

In the October 2008 final rule, the agency affirmed that States and local jurisdictions should continue to have the choice of whether to order seat belts on their large school buses since belts could enhance compartmentalization. We stated our view that States and local school districts are better able to analyze school transportation risks particular to them and identify approaches to best manage and reduce those safety risks.

The agency encouraged local officials to make the decisions most appropriate for their individual needs to most safely transport their students to and from school. (Final rule, 73 FR at 62745.)

The Petition

The CAS petition requests the agency to mandate a lap/shoulder belt requirement for all seating positions on all school buses. The petitioners disagree with the agency's discussion in the November 21, 2007 NPRM and October 21, 2008 final rule on this subject (RIN 2127–AK09) and believe that the agency ''ignored'' NTSB recommendation NTSB/SIR–99/04 (1999).[15] NTSB/SIR–99/04 recommended, among other things, that NHTSA develop performance standards for school bus occupant protection systems that account for frontal impacts, side impacts, rear impacts, and rollovers (Recommendation H–99–45), and recommended that NHTSA require new school buses to have an occupant crash protection system that meets the new performance standards and retains passengers within the seating compartment throughout the accident sequence of all accident scenarios (H–99–46). The petitioners state that NTSB classified NHTSA's response to H–99–46 as ''Closed—Unacceptable Action.'' [16]

The petitioners provided an overview of the development of seat belts in motor vehicles, starting in the 1950s, and expressed dissatisfaction with FMVSS No. 222 due to the standard's specifying, since 1977, requirements for compartmentalization for large school buses and not for seat belts. They base many of their arguments for a seat belt requirement on what they believe to be limitations of compartmentalization, views that were previously expressed, most recently in response to the 2007 NPRM of RIN 2127–AK09, by proponents of the opinion that NHTSA should require seat belts on large school buses.

The petitioners cite an NTSB Highway Accident Brief[17] regarding a May 28, 2008, school bus rollover accident near Milton, Florida, in which all the passengers were wearing lap belts and only one sustained a serious injury (according to the NTSB, the injury was possibly due to a loosely worn belt.) The NTSB determined that injury severity in the Milton, Florida crash ''was mitigated by the use of lap belts.'' The petitioners state that NTSB referred to a similar rollover crash in

[13] The benefits analysis is explained in the Final Regulatory Evaluation (FRE), Final Rule to Upgrade School Bus Passenger Crash Protection in FMVSS Nos. 207, 208, 210, and 222, Docket No. NHTSA–2008–0163–0002, *http://www.regulations.gov.* We used the passenger car effectiveness estimates because real-world data on the effectiveness of seat belts on buses is not available. Data are available on the effectiveness of seat belts on passenger cars and light trucks. We used the passenger car effectiveness estimates to calculate the effectiveness of seat belts in school bus side impact and rollover events because the passenger car effectiveness is closer to what we expect for school buses. The light truck effectiveness estimates are highly influenced by ejections, which are not common in large school buses.

[14] Under the Vehicle Safety Act, NHTSA is authorized to prescribe motor vehicle safety standards that are practicable, that meet the need for motor vehicle safety, and that are stated in objective terms. Under the Safety Act, ''motor vehicle safety'' means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident. * * *'' 49 U.S.C. 30102(a)(8). After considering all available information, we could not conclude that a requirement for seat belts on large school buses would protect against an unreasonable risk of accident or an unreasonable risk of death or injury in an accident. 73 FR at 62745. Based on available information, we concluded that a science-based, data-driven determination that there should be a Federal requirement for seat belts could not be supported.

[15] National Transportation Safety Board, Highway Special Investigation Report, Bus Crashworthiness Issues, September 21, 1999.

[16] With regard to H–99–45, the NTSB explains in the Highway Accident Brief NTSB/HAB–9/03, footnote 4 that ''[t]he Board's vote on the status of Safety Recommendation H–99–45 was split, with two members voting 'Closed—Acceptable Alternative Action' and two members voting 'Closed—Unacceptable Action.' As a result of the split vote, Safety Recommendation H–99–45 remained 'Open—Acceptable Response.' ''

[17] National Transportation Safety Board, Highway Accident Brief, School Bus Loss of Control and Rollover, Interstate 10, Near Milton, Florida, May 28, 2008, NTSB/HAB–09/03.

Flagstaff, Arizona, on August 14, 1996. In the Arizona crash, the large school bus did not have passenger seat belts, and the accident resulted in multiple ejections and one passenger sustaining lifetime crippling injuries.[18]

The petitioners also believe that NHTSA should require seat belts on large school buses because there has been a ''thirty-year history of failure by school districts and states to voluntarily install belts on large school buses.'' The petition refers to a January 9, 2010 fatal crash in Hartford, Connecticut, involving a school bus carrying 16 students and 2 adult passengers, which did not have seat belts.[19] The petition states that following the crash, there was a State move to require seat belts on school buses, but it was unsuccessful. ''History has demonstrated that * * * voluntary implementations by school authorities are extremely rare unless the vehicle construction improvement is required by law or regulatory standard at time of manufacture.''

NHTSA Response to Petition

NHTSA has considered the question of whether seat belts should be required on large school buses from the inception of compartmentalization and the school bus safety standards and has reassessed its decisions repeatedly. Each time, after analyzing the implications of a seat belt requirement and all available information, we have concluded that a seat belt requirement for large school buses has not been shown to be warranted.

We have discussed our position regarding the need for seat belts on large school buses at length in the 2007 NPRM and 2008 final rule documents of RIN 2127–AK09. To the extent the petitioners' assertions are repetitive of previously discussed points-of-view, our positions on the issues are set forth at length in the November 21, 2007 and October 21, 2008 preambles, and are summarized above. For plain language purposes and to avoid redundancy when possible, we do not repeat the detailed discussion here; interested persons can review those documents for the agency's full response to the issues. In Appendix A of today's document, we address a few miscellaneous issues the petitioners raised, in a question-and-answer format.

We carefully considered NTSB's recommendation H–99–46 when we developed the 2007 NPRM and 2008 final rule documents. We recognized in the RIN 2127–AK09 rulemaking that seat belts in large school buses may have some effect on reducing the risk of harm in frontal, side and rollover crashes, since seat belts can help restrain occupants within the seat and prevent their ejection and impact with interior surfaces. We estimated that in frontal, side and rollover crashes, lap/shoulder belts would save 2 lives annually.[20]

After considering all views, including H–99–46, we could not agree with those asking us to propose to require seat belts on large school buses. We assessed the safety need for seat belts. Since school buses are already very safe and are the safest mode of school transportation, a seat belt mandate would result in very few benefits.

We also weighed that safety need against possible negative consequences of requiring seat belts on large school buses. The greater cost to purchase and operate a large school bus with seat belts may reduce the number of school buses available for pupil transportation, and/or divert limited school transportation funds away from other necessary safety programs, such as driver and pupil training on safe loading/unloading practices. We determined that it would be inappropriate for NHTSA to require seat belts given the low safety need for the belts, when such a decision has a direct bearing on the ability of the local decision-makers to allocate and spend limited pupil transportation resources on other school transportation safety needs that are likely to garner greater benefits, perhaps at lower cost.

It bears repeating that the agency has been acutely aware that a decision on requiring seat belts in large school buses cannot ignore the implications of such a requirement on pupil transportation costs. The agency has been attentive to the fact that, as a result of requiring belts on large school buses, school bus purchasers would have to buy and operate belt-equipped vehicles regardless of whether seat belts would be appropriate for their needs. NHTSA has concluded that those costs should not be imposed on all purchasers of school buses when large school buses are currently very safe. In the area of school transportation especially, where a number of needs are competing for limited funds, we did not believe there was reason to limit the policymaking discretion of the States and local governments in deciding school transportation issues.

As presented later in this document, our analysis shows that a National lap/shoulder belt requirement for large school buses could result in an increase of 10 to 19 student fatalities annually in the U.S. A State or local jurisdiction, that is able to, could adjust its budget in the face of a seat belt mandate to avoid impacting its pupil transportation safety program in a manner that might result in this net increase in student fatalities. However, each State or local jurisdiction will differ in its ability to adjust to the cost impacts of a belt mandate. Moreover, even if a State or local jurisdiction were able to adjust its budget, the soundness of a public policy that imposes this burden on State or local jurisdictions is debatable when the incremental benefit from seat belts on large school buses is so low. We believe that the decision to reallocate local resources to account for a seat belt mandate should be a matter left to the policymaking discretion of the State or local authorities.

It is true that seat belts have been proven beneficial in rollover crashes. However, real world data show that school bus passenger fatalities and injuries in rollover events are rare. The CAS petition cites two school bus accidents in support of its position that there is a safety need for seat belts on large school buses. We cannot agree that citing to these rare instances of fatal rollover crashes forms the basis for a finding of a problem of national significance that warrants trumping local policymaking on this matter.

Under the Vehicle Safety Act, the Federal motor vehicle safety standards we issue must ''meet the need for motor vehicle safety.'' ''Motor vehicle safety'' means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident * * *'' 49 U.S.C. 30102(a)(8). In large school buses, fatal rollover crashes are rare (approximately 1 crash per year, resulting in 2 fatalities annually), as are fatal side impact crashes in which seat belts would have

[18] The NTSB/HAB–09/03 calls the Florida and Arizona accidents ''comparable.'' The NTSB document does not have a statement about the possible effect of belts in the Arizona accident.

[19] According to the petitioners, the school bus ''crashed through a roadside guardrail, plummeted down a 20-foot drop-off, and ended in the ravine below. One child was killed, and fifteen were injured.''

[20] This number is low because in side crashes, children are typically killed when they are in the direct zone of intrusion of the impacting vehicle or object. Seat belts would be unlikely to be effective in preventing the side crash fatality. NHTSA is conducting research to determine how the passenger compartment can be made more protective to mitigate injurious impacts with interior surfaces. In rollover crashes, seat belts are effective in mitigating occupant ejections, but real world data show that school bus passenger fatalities and injuries in rollover events are rare (8 serious injuries and 2 fatalities annually).

prevented death or serious injury. Fatal non-rollover frontal crashes in large school buses are uncommon (less than 1 crash per year). Large school buses are already very safe vehicles. More important, as explained below, requiring seat belts on large school buses is likely to have the effect of increasing fatalities related to school transportation. After considering all available information, we cannot conclude there is an unreasonable risk of death or injury in an accident that warrants a Federal requirement for seat belts on large school buses.

The Role of States and Local School Districts

The petitioners state a Federal requirement for seat belts on large school buses is needed because there has been a ''thirty-year history of failure by school districts and states to voluntarily install belts on large school buses.''

We strongly disagree with characterizing a State's decision not to order seat belts on large school buses as a ''failure.'' We believe that it is most appropriate if the decision to order seat belts on large school buses were left to the States and local jurisdictions rather than to NHTSA. 73 FR at 62750. States and local school districts are better able to recognize and analyze school transportation risks particular to their areas and identify approaches to best manage and reduce those safety risks. Local officials are in the best position to decide whether to purchase seat belts, since the officials must weigh a multitude of unique considerations bearing on purchasing decisions, especially when faced with budgetary constraints. Contrary to the petitioners' view, we believe that if, after weighing all the considerations, a purchaser decides not to purchase the belts, then the purchaser is determining what is best for its needs. 73 FR at 62752.

An example of a State's undertaking a comprehensive assessment of whether to purchase belts for large school buses is illustrated by the State of Alabama. Its study is summarized below.

Alabama Study Group on School Bus Seat Belts

On September 30, 2010, at the direction of Alabama Governor Bob Riley, Alabama issued a comprehensive study evaluating the need for seat belts in its school buses.[21] Governor Riley had formed a Study Group on School Bus Seat Belts in the wake of a tragic school bus crash in Huntsville[22] that took the lives of four students in November 2006. The Study Group's report, ''Cost-Effectiveness of Lap/Shoulder Seat Belts on Large Alabama School Buses,'' was issued as part of an Alabama School Bus Seat Belt Pilot Project. The project was conducted for the Alabama State Department of Education and the Governor's Study Group on School Bus Seat Belts by the University Transportation Center for Alabama, at the University of Alabama in Huntsville.

The goal of the project was to explore the implementation of lap/shoulder belts on newly-purchased large school buses in Alabama. The study included determining the rate of seat belt use, the effects on bus discipline, the attitudes of other stakeholders, the loss of capacity attributable to seat belts, and cost effectiveness of requiring lap/shoulder seat belts. The study also considered flexible seating systems in its analysis.[23]

The study found that school buses in Alabama travelled 83 million miles in 2009–2010 and on an average had 560 traffic crashes annually. The authors noted that school bus crashes per mile travelled is significantly lower than that of other vehicles in the State. In addition, since 1976, there were only five pupil fatalities inside of Alabama school buses.

As part of the pilot project, 12 school buses in the state were equipped with lap/shoulder belts. Researchers observed over 125,000 pupils inside the school buses, and determined that the average seat belt use in Alabama school buses was approximately 61.5 percent. Seat belt use was found to be quite variable in different buses, ranging from 4.8 to 94.5 percent. The study noted a 5 to 18 percent reduction in seating capacity of school buses with seat belts.

The study reported that the estimated net benefit of implementing seat belts on Alabama school buses was −$104 million to −$125 million. The net benefit is negative because the cost of the seat belts exceeds the benefit.

The authors of the study recommended using more cost-effective safety measures, other than implementing seat belts across Alabama's large school bus fleet. Most school bus pupil fatalities in Alabama occur outside the buses, in or near loading/unloading zones. The authors concluded that if funding is to be spent on school bus safety, more lives could be saved by investing in enhanced safety measures in loading/unloading zones.

NHTSA believes that the Alabama study reinforces the view that a Federal mandate requiring seat belts on large school buses would be an overreaching venture for the agency. States such as Alabama have decided that more lives would be saved in the State if its resources were spent on safety measures other than the installation of seat belts. Given the limited safety need at issue, we are not convinced there is merit for NHTSA to override a State's conclusions.

The petitioners were unsatisfied that only six States have laws requiring seat belts on large school buses. We do not view this low number as an indicator that the States have ''failed.'' Instead, we see it as a reflection of a stance taken by the States that their efforts and monies are better spent trying to keep children safe other than by the installation of seat belts on vehicles that are already very safe. For States such as Alabama, it is a decision taken after a thorough consideration of the issue.

NHTSA Analysis on the Changes in School Transportation Fatalities Due to a Seat Belt Requirement on Large School Buses

NHTSA conducted an analysis of accident data to estimate, in a manner not previously explored, how a National lap/shoulder belt requirement for large school buses might affect the current pupil transportation arena as it is today. The analysis illustrates that a National lap/shoulder belt requirement could result in more children's lives lost than saved.

The 2002 NAS study described earlier in this document indicated that the safest means for students to get to school[24] is by a school bus. Among school-aged children killed annually in motor vehicle crashes during normal school travel hours, only 0.5 percent were passengers on school buses and 1.5 percent were pedestrians involved in school bus-related crashes. Seventy-five percent of the annual fatalities were to occupants in passenger vehicles and 24 percent were to those walking or riding a bicycle.

Yet, there are many ways to get to school. If a school bus is not used to transport a child to school, other means

[21] Turner, D., Anderson, K., Tedla, E., Lindly, J., Brown, D., ''Cost-Effectiveness of Lap/Shoulder Seat Belts on Large Alabama School Buses,'' September 30, 2010. *https://docs.alsde.edu/documents/120/Pilot_Project_Cost_Effectiveness.pdf.*

[22] National Transportation Safety Board, NTSB/HAB–09/02, Highway Accident Brief: School Bus Bridge Override Following Collision With Passenger Vehicle, Huntsville, Alabama, November 20, 2006, adopted November 2009.

[23] These newly-developed seating systems have lap/shoulder belts and are reconfigurable to accommodate either three smaller students or two larger students.

[24] By ''school,'' we mean to or from school or related events. See 49 CFR 571.3, ''school bus.''

will be used to get to school. Those other means of getting to school are associated with higher safety risks.

In previous documents, NHTSA has expressed concern that, when making regulatory decisions on possible enhancements to school bus safety, the agency must bear in mind how improvements in one area might have an adverse effect on programs in other areas. The net effect on safety could be negative if the costs of purchasing and maintaining the seat belts and ensuring their correct use results in non-implementation or reduced efficacy of other pupil transportation programs that affect child safety. For example, if school bus service were reduced because of the costs to purchase and operate large seat belt-equipped school buses, more children would have to get to school using alternative, less safe ways to get to school.

NHTSA has analyzed accident data to estimate possible consequences on overall school transportation fatalities and injuries if a Federal requirement for seat belts on large school buses were adopted.[25] NHTSA used data from the School Bus Fleet, 2010 Fact Book, the 2009 National Household Travel Survey,[26] and the Fatality Analysis Reporting System (FARS). To analyze the effects of lap/shoulder belts on the demand for school buses, we applied the theory of elasticity of demand. Elasticity is an economic term that measures responsiveness of one economic variable to a change in another economic variable. In this case, we are examining the change in demand for school buses when there is an increase in the cost of a bus.

FARS data files for the period 2000 to 2008 were analyzed to determine the number of school-age children killed in motor vehicle crashes during the time of school transportation to and from school (Monday to Friday between 6 AM to 9 AM and 2 PM to 5 PM) of the school year (September 1 to June 15). As shown in Table 1 below, the analysis showed that among 6,869 fatalities of school-age children (5–18 year olds), 0.5 percent were occupants in school buses, 78.6 percent were in passenger vehicles, 12.1 percent were pedestrians, 4.9 percent were motorcycle riders and occupants of other vehicles, and 3.5 percent were pedalcyclists. Only 3.8 percent of the 6,869 fatalities were in school bus-related crashes [27] among which a majority were passenger vehicle occupants and pedestrians as shown in Table 1.

TABLE 1—SCHOOL-AGE CHILDREN (5–18 YEAR-OLD) KILLED IN MOTOR VEHICLE TRAFFIC CRASHES DURING NORMAL WEEKDAY SCHOOL TRANSPORTATION HOURS (MONDAY–FRIDAY, 6 A.M.–9 A.M. AND 2 P.M.–5 P.M.) OF THE SCHOOL YEAR (SEPTEMBER 1–JUNE 15) CATEGORIZED BY MODE OF TRANSPORTATION AND WHETHER THE CRASH WAS SCHOOL BUS-RELATED. FARS 2000–2008

School-age children (5–18 year-old)	Not school bus-related		School bus-related		Total	
	Number	Percent	Number	Percent	Number	Percent
Occupant in School Bus Body Type Vehicle or Vehicle Used as School Bus	** 1	0.0	37	0.5	38	0.55
Occupant of Other Bus Type	2	0.0	0	0.0	2	0.0
Passenger Vehicle Occupant	5268	76.7	131	1.9	5399	78.6
Motorcycle Rider	128	1.9	3	0.0	131	1.9
Occupant of All Other Vehicle Types	198	2.9	5	0.1	203	3.0
Pedestrian	748	10.9	81	1.2	829	12.1
Bicyclist	233	3.4	6	0.1	239	3.5
Other/Unknown	27	0.4	1	0.0	28	0.4
Total	6605	96.2	264	3.8	6869	100.0

** A van-based school bus that was not functioning as a school bus at the time of the crash.

Table 2, below, shows the student miles traveled in the different school transportation modes, obtained from the 2009 National Household Travel Survey. Among 123,266 million miles traveled annually by school-age children to and from school, 69.5 percent was in passenger vehicles, 25.3 percent was in school buses, 2.1 percent was walking and 0.4 percent was riding a bicycle.

TABLE 2—DISTRIBUTION OF STUDENT MILES TRAVELED TO-AND-FROM SCHOOL AND SCHOOL-RELATED ACTIVITIES BY TRANSPORTATION MODE

[Source: National Household Travel Survey—2009]

Mode of travel	Million miles traveled			
	Morning	Afternoon	Total	Percent
School Buses	15407.6	15793.7	31201.3	25.3
Other Buses	868.8	977.5	1846.4	1.5
Passenger Vehicles	39752.7	45975.3	85728.0	69.5
Pedestrian	904.6	1629.4	2534.0	2.1
Bicycles	137.0	320.2	457.2	0.4
Other (Motorcycle, Other Vehicles)	429.5	816.2	1245.7	1.0

[25] ''Changes in School Bus Travel by Requiring Lap/Shoulder Belts and the Effect on Fatalities,'' National Highway Traffic Safety Administration, February 2011. A copy has been placed in the docket for today's document.

[26] 2009 National Household Travel Survey: U.S. Department of Transportation, Federal Highway Administration, February, 2011, *http://nhts.ornl.gov/download.shtml.*

[27] A school bus-related crash is a crash which involves, either directly or indirectly, a school bus body vehicle, or other type of bus functioning as a school bus, transporting children to or from school or school-related activities.

TABLE 2—DISTRIBUTION OF STUDENT MILES TRAVELED TO-AND-FROM SCHOOL AND SCHOOL-RELATED ACTIVITIES BY TRANSPORTATION MODE—Continued

[Source: National Household Travel Survey—2009]

Mode of travel	Million miles traveled			
	Morning	Afternoon	Total	Percent
Unknown	236.0	18.1	254.1	0.2
Total	57736.2	65530.3	123266.5	

In order to determine the number of fatalities per 100 million miles traveled by school-age children to and from school and school-related activities, the fatality data for the years 2000–2008 (Table 1) were used along with the estimates of student miles traveled to and from school in 2009 [28] shown in Table 2. An estimate of annual fatalities for each school transportation mode was determined by dividing the number of fatalities in 2000–2008 (from Table 1) by 9. The school-age child fatalities per 100 million miles traveled to and from school was determined by dividing the average annual fatalities for each transportation mode by the corresponding total miles traveled in that mode (Table 2). This analysis is shown in Table 3.

TABLE 3—NUMBER OF SCHOOL-AGE CHILD FATALITIES PER 100 MILLION MILES TRAVELED BY STUDENTS TO AND FROM SCHOOL AND SCHOOL-RELATED ACTIVITIES

Mode of travel	Number of fatalities 2000–2008	Annual fatalities	Miles traveled in 2009 (million miles)	Fatalities per 100 million miles
School Buses	*37	4.1	31201.3	0.01
Other Buses	*3	0.3	1846.4	0.02
Passenger Vehicles	5399	599.9	85728.0	0.70
Pedestrian	829	92.1	2534.0	3.64
Bicycles	239	26.6	457.2	5.81
Other (Motorcycle, Other Vehicles)	334	37.1	1245.7	2.98
Unknown	28	3.1	254.1	1.22

*The van-based school bus in Table 1 that was not functioning as a school bus at the time of the crash was put in the category ''other buses'' in Table 3.

In order to evaluate the change in fatality due to a Federal requirement for seat belts on all school buses, the agency examined different types of bus seats with seat belts, their costs, and any changes in seating capacity in the bus by replacing existing seats with seats with seat belts. In the October 2008 final rule, the agency estimated that the cost of a large school bus (66–72 passengers) without seat belts is $75,000 and the incremental cost of adding seat belts on large school buses is $5,485 to $7,345 per bus. Some State officials have suggested that seats with seat belts cost closer to $10,296.[29] The agency estimated that these seats with seat belts could result in a loss in bus capacity by as much as 17 percent, depending on the mix of students riding in the buses.

In recent years, flexible school bus seat designs (flex-seats) have emerged in the marketplace where lap/shoulder belts on these bench seats can be adjusted to provide two lap/shoulder belts for two average-size high school students or three lap/shoulder belts for three elementary school students. These flex-seats with seat belts offer the potential for maintaining the original bus capacity. We do not have cost estimates for flex-seats but expect it to be in the range of the high cost estimate ($10,296). To estimate the maximum benefit for lap/shoulder belts, we only considered the flex-seat designs which can potentially limit any loss in bus capacity. Therefore, the percentage increase in cost of a large school bus with lap/shoulder belts without any resulting loss in capacity is 13.7 percent (=$10,296/$75,000).

For determining the effect on demand for school buses due to an increase in cost [30] of a new bus, we estimated a Price Elasticity of Demand (PED) value for school buses. PED is a measure of the responsiveness of the quantity demanded of a good or service to the change in its price and is calculated as the percent change in the quantity demanded divided by the percent change in price.[31] In this case, we are assessing the percentage change in the number of new school buses purchased by school districts, for a percentage change in the price of new school buses due to a requirement for lap/shoulder belts.

In economic terms, the overriding factor in determining the PED is the willingness and ability of consumers after a price change to postpone consumption decisions concerning the good and to search for substitutes. A number of factors can thus affect the PED of a good or service including:

1. *The availability of substitute goods and services:* The more easily available

[28] The distribution of student travel modes has not changed by much since the 2002 National Household Transportation survey.

[29] Presentation by Charlie Hood, Director of Student Transportation in the Florida Department of Eductation at the July 11, 2007 Public Meeting on the issue of seat belts in large school buses, Docket No. NHTSA–2007–28103–0016, *http://www.regulations.gov.*

[30] This cost does not include operating and maintenance costs (such as additional fuel cost due to increase in weight of the bus and additional cost to maintain seat belts).

[31] PED = (percentage change in quantity demanded) / (percentage change in price).

the substitute goods and services, the higher the PED is likely to be.

2. *Percentage of Income:* The higher the percentage of the consumer's income that the good or service represents, the higher the PED tends to be.

3. *Necessity:* The more necessary the good or service is, the lower the PED for the good or service.

4. *Duration of price change:* The longer the price change holds, the higher the PED is likely to be since there is more time available to find substitutes.

5. *Who pays:* When the purchaser does not directly pay for the good, the PED is likely to be lower.

Various research methods are used to calculate PEDs in real life, including analysis of historic sales data and surveys of customer preferences. To determine the PED for school bus transportation, the agency examined PEDs associated with public transportation.[32] The bus transit fare PED values, published by the American Public Transportation Association (APTA) and widely used for transit planning and modeling in North America, suggest PED values in the range of 0.36 to 0.43. This APTA estimate was based on a study of the short-term (less than two years) effects of fare changes in 52 U.S. transit systems during the late 1980s. Based on extensive research, Transportation Research Laboratory (TRL)[33] calculated that bus fare PED values average around 0.4 in the short-run, 0.56 in the medium run, and 1.0 over the long run, while metro rail fare elasticities are 0.3 in the short run and 0.6 in the long run.

We believe that the PED estimates for school bus transportation are likely to be similar to that for transit systems since the alternative services are similar (use of personal car, walking, or biking). Since a mandate for seat belts on school buses would not be a temporary cost increase and would be applicable to all new buses sold after the compliance date of such a rule, we are only considering PED in the long run. The cost of school bus transportation is an indirect cost to the consumer; therefore, we expect the PED for school buses to be a little lower than the estimates of PED in the long run for transit buses and metro rail. We do not expect the PED value for school bus transportation to be equal to 1.0[34] because we expect that school districts will find creative ways to maximize school transportation service in spite of the added cost of new school buses.[35] Therefore, based on the available PED values for transit systems, we estimate PED values for school bus transportation to range between 0.35 and 0.6.

When school district officials are faced with installing lap/shoulder belts in school buses, they will purchase the number of buses according to their budget. If their budget is limited, using PED values from 0.35 to 0.6 for school buses, a 13.7 percent increase in the price of a school bus would result in a 4.795 (13.7×0.35) percent to 8.22 (13.7×0.6) percent decrease in quantity demanded. We have assumed that the percentage decrease in the demand for school buses results in a similar decrease in school bus ridership (in this case, decrease in student miles traveled in school buses). The decrease in school bus ridership would result in students taking other modes of transportation to and from school. We assume that the students who no longer can take the school bus would adopt a mode of travel roughly in the same proportion as that being used currently by those who do not use the school bus.

Thus, we distributed the decrease in student miles traveled by school buses among the other modes of travel in accordance with the proportion of vehicle miles traveled in non-school bus travel modes presented in Table 2, above. Based on the redistributed student miles traveled, we estimated the number of fatalities associated with the different transportation modes, using the fatalities per 100 million vehicle miles traveled for the different transportation modes in Table 3, above. Table 4 presents the redistribution of vehicle miles traveled and the resulting number of fatalities for an 8.22 percent reduction in vehicle miles traveled in school buses (corresponding to a PED of 0.6).

TABLE 4—STUDENT MILES TRAVELED AND ANNUAL FATALITIES FOR BASELINE CONDITION (NO SEAT BELTS ON SCHOOL BUSES) AND REDISTRIBUTED VEHICLE MILES TRAVELED AND ASSOCIATED ANNUAL FATALITIES FOR A REDUCTION IN SCHOOL BUS MILES TRAVELED BY 8.22 PERCENT CORRESPONDING TO A PED = 0.6

Mode of travel	Miles traveled (millions)		Annual fatalities	
	Baseline (table 3)	Redistributed [1]	Baseline (table 3)	Redistributed [2]
School Buses	31201.3	28636.6	4.1	3.8
Other Buses	1846.4	1897.8	0.3	0.3
Passenger Vehicles	85728.0	88116.2	599.9	616.6
Pedestrian	2534.0	2604.6	92.1	94.7
Bicycles	457.2	469.9	26.6	27.3
Other (Motorcycle, Other Vehicles)	1245.7	1280.4	37.1	38.1
Unknown	254.1	261.1	3.1	3.2
Total	123266.5	123266.5	763.2	784.0

[1] School bus miles traveled were reduced by 8.22 percent of the baseline and these miles were redistributed according to the proportion of vehicle miles traveled in non-school bus transportation modes in Table 2. This column represents the student miles traveled to and from school in the various transportation modes when all school buses have seat belts.

[2] The redistributed annual fatalities were computed by multiplying the fatalities per 100 million miles (last column in Table 3) with the redistributed miles traveled in this table. This column represents the number of fatalities due to a reduction of school bus service by 8.22 percent.

[32] Transportation Elasticities—How Prices and other Factors Effect Travel Behavior, Transportation Demand Management (TDM) Strategies Encyclopedia, Victoria Transport Policy Institute, *http://www.vtpi.org/tdm/tdm11.htm#_Toc161022586.*

[33] TRL (2004), *The Demand for Public Transit: A Practical Guide*, Transportation Research Laboratory, Report TRL 593 (*http://www.trl.co.uk*); at *http://www.demandforpublictransport.co.uk.* This 240-page document is a detailed analysis of factors that affect transit demand, including demographic and geographic factors, price, service quality and the price of other modes.

[34] PED = 1.0 implies that the percentage decrease in the number of school buses bought by a school district is equal to the percentage increase in the cost of a new school bus.

[35] One such option would be reducing operations to a 4-day school week which is currently under consideration in 13 percent of the school districts nationwide. NAPT School Bus Fleet Magazine, June 2010.

In the October 21, 2008 final rule, the agency estimated that seat belts on school buses would prevent 2 fatalities annually. Therefore, the annual redistributed school bus fatalities in Table 4 are reduced by 2 due to seat belts (*i.e.*, 3.8 − 2 = 1.8). Similarly, the total number of school transportation fatalities when all school buses are required to have seat belts is 782 (*i.e.*, 784 − 2 = 782). This total number is 18.8 fatalities more than the baseline when seat belts are not required on school buses. Therefore, for a PED = 0.6 for school buses, the requirement for seat belts on school buses would result in 18.8 more school transportation-related fatalities per year even though seat belts are expected to save 2 lives annually. Using a PED = 0.35 (the lower estimate of the PED range), the number of redistributed fatalities is 775.4. After subtracting the estimated 2 lives saved by seat belts on school buses, the increase in school transportation fatalities when all school buses are required to have seat belts is 10.2 compared to the baseline.

This analysis suggests that there could be an overall increase of 10.2–18.8 school transportation fatalities if seat belts are required on all school buses. The cost estimates used in this analysis assume that there is no loss in capacity. Since school buses are the safest form of school transportation, any reduction in capacity per bus will result in more school transportation fatalities than when there is no loss in capacity. The cost estimates in our analysis also do not account for added fuel costs that would incur due to more fuel being used to operate heavier school buses equipped with seat belt systems.

Conclusion

After carefully considering all aspects of the petition, the agency has decided to deny it. In the 2007 NPRM and 2008 final rule documents, we considered but did not agree with NTSB's recommendation H–99–46 to the extent that the recommendation asked NHTSA to require lap/shoulder belts on large school buses. The petitioners have not presented information to suggest that the agency's decision not to require lap/shoulder belts on large school buses was incorrect.

The agency's latest analysis indicates that a requirement for lap/shoulder belts on all school buses may result in an additional 10 to 19 school transportation fatalities than currently where there is no such Federal requirement. A State or local jurisdiction, that is able to, could adjust its budget to avoid impacting its pupil transportation safety program in a manner that might result in this net increase in student fatalities in the face of a seat belt mandate. However, we believe that the decision to reallocate local resources to account for seat belts should be a matter left to the policymaking discretion of the State or local authorities. Large school buses are already very safe. States or local authorities should continue to have the discretion to decide whether their efforts and monies should be spent on seat belts on large school buses, or on measures that could be more effective in improving pupil transportation safety.

In accordance with 49 CFR part 552, this completes the agency's review of the petition for rulemaking.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: August 18, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

Appendix A: Miscellaneous Issues Raised by the Petitioners

Question 1. Why doesn't NHTSA require seat belts on large school buses when NHTSA's April 2002 report to Congress [36] on school bus safety showed that lap/shoulder belts offered the best level of protection compared to lap belts or compartmentalization alone? Didn't the 2002 NHTSA report show that head injury criterion (HIC) measurements were significantly lower for lap/shoulder belts than for compartmentalization and the seat belts kept the dummies in their seats?

Answer: NHTSA's 2002 school bus safety study results provided information about potential enhancements to large school bus occupant protection that could be achieved through the use of lap/shoulder seat belts. The study involved simulations of a 48 km/h frontal crash test of a large school bus (Type C) into a rigid barrier using a test sled and various test dummies (representing 50th percentile adult male, 5th percentile adult female, and a 6-year old child) in various seat and restraint configurations. The HIC measurements were low and below the injury assessment reference values (IARV) [37] for all the dummies in all the restraint environments (compartmentalization with low and high seat backs, lap belts, and lap/shoulder belts) except for the unrestrained 50th percentile male dummy in some tests with low seat back height where the dummy overrode the seat and contacted the dummy in front. This issue was addressed in the 2008 final rule by requiring higher seat back heights (increased from 20 inches to 24 inches) to enhance protection through compartmentalization for larger occupants. The neck injury measures were above the IARV in some tests with the unrestrained 6-year-old child and 5th percentile female dummy while they were below the IARVs when restrained by lap/shoulder belts. However, neck injuries are rare in real world crashes so it is unclear how representative the laboratory tests were of the real world condition, *e.g.* how representative the test dummies were of humans, the sled test of an actual vehicle crash, and the magnitude of the crash replicated as compared to real-world school bus crashes. Nevertheless, the agency used these test results to determine the incremental benefits garnered in frontal crashes by the addition of lap/shoulder belts to large school bus seats and is presented in detail in NHTSA's Final Regulatory Evaluation (FRE) [38] accompanying the 2008 final rule. The FRE determined that the addition of lap/shoulder belts in large school buses would save 0.55 lives and 750 injuries (97 percent of which are minor/moderate severity) in frontal school bus crashes for 100 percent correct seat belt use. Using effectiveness estimates for lap/shoulder belts of 74 percent in rollover and 21 percent in side impacts, the FRE estimated that lap/shoulder belts on large school buses would save 1.33 lives in rollover and 0.25 lives in side impacts crashes when all occupants use their seat belts. These benefits are relatively low since school buses (with high back seats for effective compartmentalization) are already very safe and are the safest mode of transportation to and from school. The cost-benefit analysis in the FRE found that installing lap/shoulder belts on all new large school buses would cost $183–$252 million annually and save 2 lives and 1,900 injuries per year for 100 percent correct belt use.

Due to the limited funds available for school transportation, a Federal requirement for seat belts on all school buses may reduce school bus service and as a result school bus ridership. We are concerned that the reduced bus ridership may result in more student fatalities, since riding in private vehicles is less safe than riding a large school bus without seat belts. Our analysis presented in this notice shows that a Federal mandate for seat belts on large school buses could result in 10–19 more school children being killed annually while traveling to and from school. Therefore, the agency continues to not support a Federal requirement for seat belts on large school buses. We believe that States and local school districts are better able to analyze school transportation risks particular to them and identify approaches to best manage and reduce these safety risks. The final rule, while not requiring seat belts on large school buses, provides appropriate performance requirements for these systems if school districts determine that seat belt installation is in their best interest.

Question 2. In a document submitted after publication of the October 21, 2008 final rule, Public Citizen (PC) submitted a post-final

[36] National Highway Traffic Safety Administration, Report to Congress—School Bus Safety: Crashworthiness Research, April 2002, *http://www.nhtsa.gov/DOT/NHTSA/NRD/Multimedia/PDFs/Crashworthiness/SchoolBus/SBReportFINAL.pdf.*

[37] Injury assessment in accordance with that specified in FMVSS No. 208, ''Occupant crash protection'').

[38] Final Regulatory Evaluation of the Final Rule to Upgrade School Bus Passenger Crash Protection in FMVSS Nos. 207, 208, 210, and 222, October 2008, Docket No. NHTSA–2008–0163–0002, *http://www.regulations.gov.*

rule comment objecting to NHTSA's decision not to require lap/shoulder belts on large school buses. For a summary of the comment, see 75 FR at 66694. Among other things, PC objected to the cost and benefit analysis of the Final Regulatory Evaluation (FRE). PC raised the question: why didn't the FRE ''discuss the effect of 'economies of scale' in reducing the incremental cost of adding belts to the buses * * * Economies of scale and learning by doing can significantly reduce costs, but NHTSA's economic analyses makes no mention of these efforts.''

Answer: We have evaluated this comment and do not believe that the ''economies of scale'' and ''learning by doing'' will significantly reduce the cost of requiring lap/shoulder belts in large school buses. The lap/shoulder belts in large school buses are similar to the lap/shoulder belts that are sold for the many millions of light duty vehicles, so the economies of scale for webbing, buckles, and retractors have already been achieved. There will be little economies of scale by the seat manufacturers; since they are just replacing one seat with one equipped with lap/shoulder belts. Again, they are just installing a different seat and perhaps a different seat track. We also do not agree that ''learning by doing'' will decrease the cost of installing lap/shoulder belts in large school buses because school bus manufacturers already know how to install lap/shoulder belts in large school buses.

Question 3. In its comments to the final rule, PC stated that lap-only belts should not be permitted in school buses. PC stated that in 1999 the NTSB suggested there may be potential for greater injuries in occupants restrained using lap-only belts in side crashes. Why hasn't NHTSA banned lap belts in large school buses?

Answer: The agency explained in the final rule that it has studied lap belts in frontal crashes in the school bus research program [39] and analyzed data from States which include side impact and rollovers, and could not determine that lap belts translate to an overall greater safety risk. Our real world data indicates that lap belts are as effective as lap/shoulder belts in rollover crashes, and benefit far side occupants in side impacts involving these vehicles.

PC provided no data to support the implication that lap belts may be harmful in side impacts, and we disagree with its view of the 1999 NTSB study. The NTSB came to the conclusion in the 1999 report that ''* * * because injuries occurred for all restraint conditions in the simulated accidents and because injury levels varied depending upon occupant kinematics and seating location, the Safety Board concludes that it cannot be determined whether the current design of available restraint systems for large school buses would have reduced the risk of injury to the school bus passengers in these accidents.''

The NTSB has since studied two school bus crashes where lap-only belts have been beneficial in mitigating injuries in side impact and rollover crashes. In its review of the March 2000 side impact collision between a school bus and a freight train near the Tennessee and Georgia border [40] and the May 2008 school bus rollover near Milton, Florida,[41] the NTSB concluded that passenger injuries were reduced because of lap belts. We note that the Milton, Florida crash, where the school bus was equipped with lap belts, was cited by the petitioners, among which PC was a signatory, as an exemplar case where seat belts on large school buses were effective in preventing fatalities and serious injuries. Given the available information, the agency declines to change its position on the allowance of lap belts on large school buses in response to PC's comment.

[FR Doc. 2011–21596 Filed 8–24–11; 8:45 am]

BILLING CODE 4910–59–P

[39] Report to Congress, School Bus Safety: Crashworthiness Research, April 2002.

[40] ''Collision of CSXT Freight Train and Murray County School District School Bus at Railroad/Highway Grade Crossing, Conasauga, Tennessee,'' March 28, 2000; National Transportation Safety Board, HAR 01/03, December 2001.

[41] ''School Bus Loss of Control and Rollover, on Interstate 10, near Milton, Florida,'' May 28, 2008; National Transportation Safety Board, HAB–09–03, November 2009.

Notices

Federal Register
Vol. 76, No. 165
Thursday, August 25, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Guidelines for Designating Biobased Products for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of request for extension of a currently approved information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Department of Agriculture, Office of Procurement and Property Management, is hereby requesting an extension of a currently approved information collection, Guidelines for Designating Biobased Products for Federal Procurement.

DATES: Comments received by October 24, 2011 will be considered.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name. Also, please identify submittals as pertaining to the ''Notice of Request for Extension of a Currently Approved Information Collection.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: biopreferred@usda.gov.* Include ''Notice of Request for Extension of a Currently Approved Information Collection'' on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202)720–2600 (voice) and (202) 690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024; e-mail: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION:

Title: Guidelines for Designating Biobased Products for Federal Procurement.

OMB Control Number: 0503–0011.

Type of Request: Extension of a currently approved information collection.

Abstract: The USDA BioPreferred Program provides that qualifying biobased products that fall under items (generic groups of biobased products) that have been designated for preferred procurement by rule making are required to be purchased by Federal agencies in lieu of their fossil energy-based counterparts, with certain limited exceptions. Further, USDA is required by section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008, to provide certain information on qualified biobased products to Federal agencies. To meet these statutory requirements, USDA will gather that information from manufacturers and vendors of biobased products. To the extent feasible, the information sought by USDA can be transmitted electronically using the Web site *http://www.biopreferred.gov.* If electronic transmission of information is not practical, USDA will provide technical assistance to support the transmission of information to USDA. The information collected will enable USDA to meet statutory information requirements that then permit USDA to designate items for preferred procurement under the BioPreferred Program. Once items are designated, manufacturers and vendors of qualifying biobased products that fall under these designated items will benefit from preferred procurement by Federal agencies.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 104 hours per response.

Respondents: Manufacturers and vendors of biobased products.

Estimated Annual Number of Respondents: 75

Estimated Number of Responses per Respondent: One per manufacturer or vendor.

Estimated Total Annual Burden on Respondents: 7,800 hours, one time only. Manufacturers and vendors are asked to respond only once. Therefore, there is no ongoing annual paperwork burden on respondents.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

Dated: August 17, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2011–21695 Filed 8–24–11; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee will meet in Placerville, California. 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 RAC will

review and discuss implementation of approved RAC projects.

DATES: The meeting will be held on September 12, 2011 beginning at 6 p.m.

ADDRESSES: The meeting will be held at the El Dorado Center of Folsom Lake College, Community Room, 6699 Campus Drive, Placerville, CA 95667.

Written comments should be sent to Frank Mosbacher; Forest Supervisor's Office; 100 Forni Road, Placerville, CA 95667. Comments may also be sent via e-mail to *fmosbacher@fs.fed.us,* or via facsimile to 530–621–5297.

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 100 Forni Road; Placerville, CA 95667. Visitors are encouraged to call ahead to 530–622–5061 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Frank Mosbacher, Public Affairs Officer, Eldorado National Forest Supervisors Office, (530) 621–5268. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

The following business will be conducted: The RAC will review and discuss implementation of approved RAC projects. More information will be posted on the Eldorado National Forest Web site @ *http://www.fs.fed.us/r5/eldorado.* A public comment opportunity will be made available following the business activity. Future meetings will have a formal public imput period for those following the yet to be developed public imput process.

Dated: August 17, 2011.

Michael A. Valdes,

Acting Forest Supervisor.

[FR Doc. 2011–21741 Filed 8–24–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is for the committee to hear project status, review project proposals and to vote and make recommendations. The meeting is open to the public. Opportunity for public comment will be provided.

DATES: The meeting will be held Monday September 19, 2011 at 4 pm.

ADDRESSES: The meeting will be held at the Klamath National Forest Supervisor's Office, conference room, 1312 Fairlane Road, Yreka, CA 96097. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.**

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Klamath National Forest Supervisor's Office. Please call ahead to (530) 841–4484 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kerry Greene, Community Development and Outreach Specialist, Klamath National Forest, (530) 841–4484, *kggreene@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: project updates and financial status, and review of project proposals currently under consideration by the RAC. No new project proposals are being accepted at this time. The RAC will be prioritizing all projects received and passed this year and making their recommendations to the Designated Federal Official. This will be the final monthly meeting of the Siskiyou County RAC until further notice. The meeting is open to the public. Opportunity for public comment will be provided and individuals will have the opportunity to address the Committee at that time. Alternatively, anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 1, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 1312 Fairlane Road Yreka, CA 96097, or by email to *kggreene@fs.fed.us,* or via facsimile to (530) 841–4571.

Dated: August 19, 2011.

Patricia A. Grantham,

Forest Supervisor.

[FR Doc. 2011–21836 Filed 8–24–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee will meet in Sandy, Oregon. 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 have a field trip review of Title II projects by the committee.

DATES: The meeting will be held on September 26, 2011, and begin at 10 a.m

ADDRESSES: The meeting will be held at Mt. Hood National Forest Headquarters; 16400 Champion Way; Sandy, Oregon; (503) 668–1700. Written comments should be sent to Connie Athman, Mt. Hood National Forest, 16400 Champion Way, Sandy, OR 97055. Comments may also be sent via e-mail to *cathman@fs.fed.us*, or via facsimile to 503–668–1413.

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 Mt. Hood National Forest, 16400 Champion Way, Sandy, Oregon.

FOR FURTHER INFORMATION CONTACT: Connie Athman, Mt.Hood National Forest, 16400 Champion Way, Sandy, OR, 97055; (503) 668 1672; E-mail: *cathman@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339

between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Public Forum and; (2) Field Trip to Review Title II Projects. The Public Forum is tentatively scheduled to begin at 10:05 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the September 26th meeting by sending them to Connie Athman at the address given above.

Dated: August 15, 2011.

Chris Worth,

Forest Supervisor.

[FR Doc. 2011–21840 Filed 8–24–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–4–2011]

Foreign-Trade Zone 77—Memphis, TN; Application for Temporary/Interim Manufacturing Authority; Flextronics Logistics USA, Inc. (Cell Phone/Mobile Handset Kitting); Memphis, TN

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by the City of Memphis, grantee of FTZ 77, requesting temporary/interim manufacturing (T/IM) authority within FTZ 77 at the Flextronics Logistics USA, Inc. (Flextronics) facility, located in Memphis, Tennessee. The application was filed on August 19, 2011.

The Flextronics facility (approximately 1,000 employees, 19.58 acres, up to 20 million units per year capacity) is located at 6100 and 6380 Holmes Road, Memphis (Site 4). Under T/IM procedures, Flextronics has requested authority to produce cell phones/mobile handsets kits (HTSUS 8517.12, HTSUS 8517.62, HTSUS 8517.69, duty free). Foreign components that would be used in the activity (representing up to 75% of the value of the finished kits) include: LCD adhesive (HTSUS 3919.90); labels (HTSUS 3919.90); polyethylene bags (HTSUS 3923.21); recycling bags (HTSUS 3923.21); plastic sleeves and trays (HTSUS 3923.90); swivel holsters (HTSUS 4202.31); leather battery covers (HTSUS 4202.91); holsters (HTSUS 4202.92); battery chargers (HTSUS 8504.40); batteries (HTSUS 8507.80); stereo headsets (HTSUS 8518.30); LCDs (HTSUS 8528.59); spring contacts (HTSUS 8536.69); and, micro USB cable (HTSUS 8544.42) (duty rate ranges from free to 17.6 percent). T/IM authority could be granted for a period of up to two years.

On its domestic sales, FTZ procedures would allow Flextronics to choose the duty rates during customs entry procedures that apply to cell phone/mobile handset kits (duty free) for the foreign inputs noted above.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations pursuant to Board Orders 1347 and 1480.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave., NW., Washington, DC 20230. The closing period for their receipt is September 26, 2011.

Flextronics has also submitted a request to the FTZ Board for FTZ manufacturing authority beyond a two-year period, which may include additional products and components. It should be noted that the request for extended authority would be docketed separately and would be processed as a distinct proceeding. Any party wishing to submit comments for consideration regarding the request for extended authority would need to submit such comments pursuant to the separate notice that would be published for that request.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: August 19, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–21773 Filed 8–24–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1779]

Expansion of Foreign-Trade Zone 202; Los Angeles, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board of Harbor Commissioners of the City of Los Angeles, grantee of Foreign-Trade Zone 202, submitted an application to the Board for authority to expand FTZ 202 to include a site in Los Angeles, California, within the Los Angeles/Long Beach Customs and Border Protection port of entry (FTZ Docket 47–2010, filed 07/30/2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 47536–47537, 08/06/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 202 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on 08/30/2016 for Site 25 if no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 12th day of August 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–21780 Filed 8–24–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 11, 2011, the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (''the Department's'') results of redetermination as applied to Shanghai Lian Li Paper Products Co., Ltd. (''Lian Li'') pursuant to the CIT's decision in *Association of American School Paper Suppliers* v. *United States,* Court No. 09–00163, Slip Op. 10–82 (July 27, 2010). *See* Final Results of Redetermination Pursuant to Remand, Court No. 09–00163, dated December 6, 2010 (''Remand Results''), and *Association of American School Paper Suppliers* v. *United States,* Court No. 09–00163, Slip Op. 11–101 (August 11, 2011). The Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final determination and is amending the final results of the administrative review of the antidumping duty order on certain lined paper products (''CLPP'') from the People's Republic of China (''PRC'') covering the period of review (''POR'') of April 17, 2006, through August 31, 2007, with respect to Lian Li.

DATES: *Effective Date:* August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone; (202) 482–5075.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 2009, the Department published its final results of the administrative review for CLPP from the PRC for the period April 17, 2006, through August 31, 2007. *See Certain Lined Paper Products From the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review,* 74 FR 17160 (April 14, 2009) (''*Final Results*'').

On December 22, 2009, the Department published its amended final results of review. *See Notice of Amended Final Results of the Antidumping Duty Administrative Review of Certain Lined Paper Products From the People's Republic of China,* 74 FR 68036 (December 22, 2009) (''*Amended Final*'').

AASPS challenged the Department's *Amended Final* at the CIT. On July 27, 2010, the CIT remanded the case for the Department to revisit its determination that the financial information for Sundaram Multi Pap Ltd. (''Sundaram'') is the best information available to calculate surrogate financial values for Lian Li.

On December 6, 2010, the Department issued its final results of remand redetermination. *See* Remand Results. The Department continued to find that Sundaram's financial information constitutes the best available information on the record for calculating surrogate financial ratios. The Department also determined that, in the *Amended Final,* it had not identified the figures used to calculate the surrogate financial ratios, and had erroneously relied on actual values from the Sundaram Profit and Loss statement as opposed to dividing those values by the appropriate denominator to calculate the surrogate financial ratios. In the Remand Results, the Department calculated the surrogate financial ratios by dividing the actual values from the Sundaram Profit and Loss statement by the appropriate denominator. *See* Remand Results at 28. On August 11, 2011, the CIT affirmed the Department's Remand Results. *See Association of American School Paper Suppliers* v. *United States,* Court No. 09–00163, Slip Op. 11–101 (August 11, 2011).

Timken Notice

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (CAFC 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (CAFC 2010), pursuant to section 516A(c) of the Tariff Act of 1930, as amended (''the Act'') 19 U.S.C. 1516a(c), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's judgment on August 11, 2011, sustaining the Department's Remand Results with respect to Lian Li constitutes a decision of that court that is not in harmony with the Department's *Amended Final.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision with respect to Lian Li, Lian Li's weighted-average dumping margin for the period April 1, 2006, through August 31, 2007, is 8.10 percent. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported during the POR by Lian Li using the revised assessment rate calculated by the Department in the Remand Results.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: August 19, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–21770 Filed 8–24–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 25, 2011.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Cindy Robinson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 2011, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Turkey (pasta) for the period July

1, 2009, through June 30, 2010.[1] The final results of administrative review are currently due August 27, 2011.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. Completion of the final results of the administrative review within the 120-day period is not practicable because the Department needs additional time to analyze complex issues regarding affiliation and knowledge of U.S. destination. Given the complexity of these issues, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the final results of this review to 180 days. Therefore, the final results are now due no later than October 26, 2011.

We are publishing this notice pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: August 19, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–21833 Filed 8–24–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Virginia Polytechnic Institute, et al.; Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC.

Docket Number: 11–039. *Applicant:* Virginia Polytechnic Institute, Department of Engineering Science and Mechanics, Blacksburg, VA 24061. *Instrument:* Nano test platform. *Manufacturer:* Micro Materials Ltd., United Kingdom. *Intended Use:* See notice at 76 FR 43263, July 20, 2011. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. *Reasons:* This instrument is unique in that it can support the technical requirements for high temperature nanoindentations, nanoimpact, nanofatigue and wet stage nanoindentation.

Docket Number: 11–040. *Applicant:* University of Colorado at Boulder, Procurement Service Center, Denver, CO 80202. *Instrument:* Low-temperature atomic force microscope. *Manufacturer:* Attocube Systems AG, Germany. *Intended Use:* See notice at 76 FR 43263, July 20, 2011. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. *Reasons:* This instrument must be compatible with high magnetic fields, which requires a special selection of non-magnetic materials the instrument has to be built from. The low-temperature capability requires special piezoelectric scanners and sample mounting and cooling techniques, unique to this instrument.

Dated: August 22, 2011.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2011–21757 Filed 8–24–11; 8:45 am]

BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled Current Population Survey Civic Engagement Supplement for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nathan Dietz, at (202) 606–6633 or e-mail to *ndietz@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on June 17, 2011. This comment period ended August 16, 2011. No public comments were received from this Notice.

Description: The Corporation is seeking approval for the Civic Engagement Supplement, which is conducted by the U.S. Census Bureau in conjunction with the annual November Current Population Survey (CPS). The Civic Engagement Supplement provides information on the extent to which American communities are places where individuals are civically active. The Corporation uses the Civic

[1] *See Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 23974 (April 29, 2011) (*Preliminary Results*).

Engagement Supplement to collect data for the Civic Health Assessment, an annual report that is mandated by the Serve America Act.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Current Population Survey Civic Engagement Supplement.

OMB Number: # 0607–0466 [existing Census clearance number].

Agency Number: None.

Affected Public: Individuals or households.

Total Respondents: 54,000.

Frequency: Annual.

Average Time Per Response: Ten minutes per household.

Estimated Total Burden Hours: 9,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 22, 2011.

John Kim,

Director of Strategic Initiatives, Strategy Office.

[FR Doc. 2011–21734 Filed 8–24–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2011–HA–0096]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (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.

DATES: Consideration will be given to all comments received by October 24, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Chief Medical Officer (OCMO), TRICARE Management Activity, ATTN: Ms. Judy George, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206, or call OCMO, Patient Safety Division, at (703) 681–0064.

Title; Associated Form; and OMB Number: DoD Patient Safety Survey; OMB Number 0720–0034.

Needs and Uses: The 2001 National Defense Authorization Act contains specific sections addressing patient safety in military and veterans health care systems. This legislation states that the Secretary of Defense shall establish a patient care error reporting and management system to study occurrences of errors in patient care and that one of the purposes of the system should be ''To identify systemic factors that are associated with such occurrences'' and ''To provide for action to be taken to correct the identified systemic factors'' (Sec. 754, items b2 and b3). In addition, the legislation states that the Secretary shall ''Continue research and development investments to improve communication, coordination, and team work in the provision of health care'' (Sec. 754, item d4).

In its ongoing response to this legislation and in support of its mission to ''promote a culture of safety to eliminate preventable patient harm by engaging, educating and equipping patient-care teams to institutionalize evidence-based safe practices,'' the DoD Patient Safety Program plans to field the Tri-Service Patient Safety Culture Survey. The Culture Survey is based on the Department of Health and Human Services' Agency for Healthcare Research and Quality's validated survey instrument. Previously administered in 2005/6 and 2008, the survey obtains MHS staff opinions on patient safety issues such as teamwork, communications, medical error occurrence and response, error reporting, and overall perceptions of patient safety. The purpose of the survey is to assess the current status of patient safety in MHS facilities and to assess patient safety improvement over time. Two versions of the survey will be available for administration. The inpatient survey tool is the same, OMB-approved tool that was administered in previous years. There will also be a corresponding outpatient survey tool, with congruous questions tailored to the ambulatory or clinic setting. Respondents will select the survey corresponding to their care survey.

Affected Public: Federal government; individuals or households.

Annual Burden Hours: 2,337 hours.

Number of Respondents: 14,022.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Respondent's obligation—voluntary.

Summary of Information Collection

The Web-based survey will be administered on a voluntary-basis to all staff working in Army, Navy, and Air Force Military Health System (MHS) direct care facilities in the U.S. and internationally, including Military Treatment Facility (MTF) hospitals as well as ambulatory and dental services. Responses and respondents will remain anonymous. There are two versions of the survey that may be administered, corresponding to the setting in which care is delivered, either Hospital (inpatient) or Ambulatory (outpatient/clinic setting).

Dated: August 22, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–21744 Filed 8–24–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0055]

Defense Logistics Agency Revised Regulation 1000.22, Environmental Considerations in Defense Logistics Agency Actions

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Comment Addressed on Notice of Availability (NOA) of Revised Defense Logistics Agency Regulation (DLAR) 1000.22, June 1, 1981.

SUMMARY: On May 18, 2011, the Defense Logistics Agency (DLA) published a Notice of Availability (NOA) in the **Federal Register** (76 FR 28757) announcing the revised Defense Logistics Agency Regulation (DLAR) 1000.22, which was available for a 30-day public comment period. DLA received one comment from the Navy stating that a citation within the technical support documentation should be changed. The change has been incorporated. DLAR 1000.22 will be signed into effect upon completion of this publication into the **Federal Register**.

Dated: August 22, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–21743 Filed 8–24–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, Section 102.3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel will be renewed for a two-year period, beginning on August 12, 2011. The Panel will provide advice and recommendations to the Director, Office of Science (DOE), and the Assistant Director, Mathematical & Physical Sciences Directorate (NSF), on long-range planning and priorities in the national High Energy Physics program.

Additionally, the renewal of the HEPAP has been determined to be essential to conduct the Department of Energy and the National Science Foundation business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Panel will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of those Acts.

FOR FURTHER INFORMATION CONTACT: Glen Crawford, Designated Federal Office, at (301) 903–9458.

Issued at Washington, DC, on August 12, 2011.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2011–21731 Filed 8–24–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–105–000.

Applicants: Long Island Solar Farm, LLC, BP Solar, LISF Solar Trust (MetLife).

Description: Application for Authorization of Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act and Requests for Expedited Consideration and Confidential Treatment of Long Island Solar Farm, LLC, et. al.

Filed Date: 08/16/2011.

Accession Number: 20110816–5126.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–118–000.

Applicants: Copper Crossing Solar LLC.

Description: Self-Certification of Exempt Wholesale Generator Status of Copper Crossing Solar LLC.

Filed Date: 08/16/2011.

Accession Number: 20110816–5138.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–850–002.

Applicants: New York Independent System Operator, Inc.

Description: Report/Form of New York Independent System Operator, Inc.

Filed Date: 08/16/2011.

Accession Number: 20110816–5157.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER10–2629–004.

Applicants: FirstLight Power Resources Management, LLC.

Description: FirstLight Power Resources Management, LLC submits tariff filing per: FLPRM Supplemental Record to be effective 8/16/2011.

Filed Date: 08/16/2011.

Accession Number: 20110816–5094.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER10–2636–004.

Applicants: Mt. Tom Generating Company, LLC.

Description: Mt. Tom Generating Company, LLC submits tariff filing per: Mt. Tom Supplement to be effective 8/16/2011.

Filed Date: 08/16/2011.

Accession Number: 20110816–5095.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–3753–000.

Applicants: People's Power & Gas, LLC

Description: Supplemental Comments of People's Power & Gas, LLC.

Filed Date: 08/16/2011.

Accession Number: 20110816–5152.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–3851–001.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.17(b): 2011_8–15_NSP–WPL Amend Cert of Con_311 to be effective 6/20/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5112.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–3852–001.

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: Northern States Power Company, a Wisconsin corporation submits tariff filing per 35.17(b): 2011–8–15_Amend_NSPW–WPL–Cert of Con to be effective 6/20/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5119.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–3989–001.

Applicants: Michigan Wind 2, LLC.

Description: Michigan Wind 2, LLC submits tariff filing per 35.17(b): Amendment to Application for Market-Based Rate Authorization to be effective 9/1/2011.

Filed Date: 08/17/2011.

Accession Number: 20110817–5070.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–4318–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits Transmission Owner Formula 3 Rate filing.
Filed Date: 08/15/2011.
Accession Number: 20110816–0202.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4319–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: IP08 Termination to be effective 10/16/2011.
Filed Date: 08/16/2011.
Accession Number: 20110816–5096.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4320–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Amendment to Service Agreement No. 174 to be effective 7/17/2011.
Filed Date: 08/16/2011.
Accession Number: 20110816–5136.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4321–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV AG SCE–GPS 2501 W. San Bernardino, Redlands Roof Top Solar Project to be effective 8/18/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5000.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 7, 2011.

Docket Numbers: ER11–4322–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV AG SCE–GPS 2250 Sequoia Ave Ontario Roof Top Solar Project to be effective 8/18/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5001.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 7, 2011.

Docket Numbers: ER11–4323–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV AG SCE–GPS 570 E. Mill St San Bernardino Roof Top Solar Project to be effective 8/18/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5002.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 7, 2011.

Docket Numbers: ER11–4324–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV AG SCE–GPS 3800 E. Philadelphia St Ontario Roof Top Solar Project to be effective 8/18/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5003.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 7, 2011.

Docket Numbers: ER11–4325–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV AG SCE–GPS 13550 Valley Blvd Fontana Roof Top Solar Project to be effective 8/18/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5004.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 7, 2011.

Docket Numbers: ER11–4326–000.
Applicants: Viridian Energy MD LLC.
Description: Viridian Energy MD LLC submits tariff filing per 35.12: Viridian Energy MD LLC Market Based Rate Tariff to be effective 9/15/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5006.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 7, 2011.

Docket Numbers: ER11–4327–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii: Attachment T Planning Horizon Amendment to be effective 10/16/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5088.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 7, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–42–000.
Applicants: Interstate Power and Light Company.
Description: Interstate Power and Light Company submits Form 523 Application for authorization to issue securities and request for waiver of competitive bidding requirements.
Filed Date: 08/17/2011.
Accession Number: 20110817–5106.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 7, 2011.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD11–10–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard FAC–008–3— Facility Ratings.
Filed Date: 06/15/2011.
Accession Number: 20110615–5154.
Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 17, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21686 Filed 8–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–117–000.
Applicants: Louisiana Generating LLC.
Description: Self-Certification of Exempt Wholesale Generator Status of Louisiana Generating LLC.
Filed Date: 08/16/2011.
Accession Number: 20110816–5045.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2627–004.
Applicants: FirstLight Hydro Generating Company.
Description: FirstLight Hydro Generating Company submits tariff filing per: FL Hydro Supplement to the Record to be effective 8/16/2011.
Filed Date: 08/16/2011.
Accession Number: 20110816–5091.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–3650–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Amendment to 607R13 Westar Energy, Inc. NITSA and NOA to be effective 5/1/2011.
Filed Date: 08/16/2011.
Accession Number: 20110816–5028.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4310–000.
Applicants: Michigan Electric Transmission Company, Midwest Independent Transmission System Operator, Inc.
Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.13(a)(2)(iii: G479b Errata Filing to be effective 8/1/2011.
Filed Date: 08/15/2011.
Accession Number: 20110815–5089.
Comment Date: 5 p.m. Eastern Time on Thursday, August 25, 2011.

Docket Numbers: ER11–4317–000.
Applicants: PPL Electric Utilities Corporation.
Description: Notice of Cancellation of PPL Electric Utilities Corporation.
Filed Date: 08/15/2011.
Accession Number: 20110815–5209.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–2–000.
Applicants: Goshen Phase II LLC.
Description: Goshen Phase II LLC Quarterly Land Acquisition Report.
Filed Date: 08/16/2011.
Accession Number: 20110816–5057.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 16, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21687 Filed 8–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–104–000.
Applicants: FirstEnergy Solutions Corp., FirstEnergy Generation Corp., Richland-Stryker Generation LLC.
Description: Application of FirstEnergy Generation Corp., *et al.* for Authorization Pursuant to Section 203 of the Federal Power Act and Requests for Waivers of Filing Requirements, Confidential Treatment, and Expedited Review.
Filed Date: 08/15/2011.
Accession Number: 20110815–5147.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–115–000.
Applicants: Caney River Wind Project, LLC.
Description: Self-Certification of EG of Caney River Wind Project, LLC.
Filed Date: 08/09/2011.
Accession Number: 20110809–5060.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: EG11–116–000.
Applicants: Mesquite Solar 1, LLC.
Description: Mesquite Solar 1, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 08/15/2011.
Accession Number: 20110815–5114.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1801–001.
Applicants: The Connecticut Light and Power Company.
Description: The Connecticut Light and Power Company submits tariff filing per 35: Market Based Rate Triennial Compliance Order issued 7–13–11 to be effective 7/13/2011.
Filed Date: 08/09/2011.
Accession Number: 20110809–5018.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER10–1811–001.
Applicants: Select Energy, Inc.
Description: Select Energy, Inc submits tariff filing per 35: Market Based Rate Triennial Compliance Order issued 7–13–11 to be effective 7/13/2011.
Filed Date: 08/09/2011.
Accession Number: 20110809–5019.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER10–2627–004.
Applicants: FirstLight Hydro Generating Company.
Description: FirstLight Hydro Generating Company submits tariff filing per 35: Revised FL Hydro Tariff to be effective 9/16/2011.
Filed Date: 08/15/2011.
Accession Number: 20110815–5155.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER10–2629–004.
Applicants: FirstLight Power Resources Management, LLC.
Description: FirstLight Power Resources Management, LLC submits tariff filing per 35: FLPRM Revised Tariff to be effective 9/16/2011.
Filed Date: 08/15/2011.
Accession Number: 20110815–5149.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER10–2636–004.
Applicants: Mt. Tom Generating Company, LLC.
Description: Mt. Tom Generating Company, LLC submits tariff filing per 35: Mt Tom Revised Tariff to be effective 9/16/2011.
Filed Date: 08/15/2011.
Accession Number: 20110815–5158.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–3572–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 08–11–11 DAMAP Compliance to be effective 5/14/2011.
Filed Date: 08/11/2011.
Accession Number: 20110811–5064.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

Docket Numbers: ER11–3667–002.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits tariff filing per 35.17(b): Amendment filing to include an integrated Service Agreement No. 193 to be effective 4/29/2011.

Filed Date: 08/12/2011.

Accession Number: 20110812–5191.

Comment Date: 5 p.m. Eastern Time on Friday, September 2, 2011.

Docket Numbers: ER11–3715–001.

Applicants: Morris Cogeneration, LLC.

Description: Morris Cogeneration, LLC submits tariff filing per 35: Supplement to Notice of Change in Status Morris Cogeneration, LLC to be effective 4/29/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5172.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–3716–001.

Applicants: Manchief Power Company LLC.

Description: Manchief Power Company LLC submits tariff filing per 35: Supplement to Notice of Change in Status of Manchief Power Co. to be effective 4/29/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5163.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–3717–001.

Applicants: Frederickson Power L.P.

Description: Frederickson Power L.P. submits tariff filing per 35: Supplement to Notice of Change in Status of Frederickson Power L.P. to be effective 4/29/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5166.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–3720–001.

Applicants: CPI USA North Carolina LLC.

Description: CPI USA North Carolina LLC submits tariff filing per 35: Supplement to Notice of Change in Status of CPI USA North Carolina LLC to be effective 4/29/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5170.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–3734–001.

Applicants: CPI Energy Services (US) LLC.

Description: CPI Energy Services (US) LLC submits tariff filing per 35: Supplement to Notice of Change in Status of CPI Energy Services (US) LLC to be effective 4/29/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5171.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–4037–001.

Applicants: Interstate Gas Supply, Inc.

Description: Interstate Gas Supply, Inc. submits tariff filing per 35.17(b): Amended Market Based Rate to be effective 8/12/2011.

Filed Date: 08/11/2011.

Accession Number: 20110811–5089.

Comment Date: 5 p.m. Eastern Time on Thursday, September 1, 2011.

Docket Numbers: ER11–4151–001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.17(b): 2011–08–09 CAISO Errata to NRS–RA Amendment to be effective 1/1/2012.

Filed Date: 08/09/2011.

Accession Number: 20110809–5117.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–4173–001.

Applicants: Michigan Electric Transmission Company, Midwest Independent Transmission System Operator, Inc.

Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.17(b): G479b (Errata) (2) to be effective 8/1/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5145.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4311–000

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 2985 among PJM, Exelon Generation Co. and ComEd to be effective 7/15/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5127.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4312–000.

Applicants: Gila River Energy Supply LLC.

Description: Gila River Energy Supply LLC submits tariff filing per 35.15: Gila River Energy Supply-Cancellation of MBR Tariff to be effective 8/16/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5130.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4313–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO 205 filing re: Operational Responsibilities to be effective 10/14/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5157.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4314–000.

Applicants: Southern Electric Generating Company.

Description: Southern Electric Generating Company submits tariff filing per 35.1: SEGCO Power Contract Filing to be effective 1/1/2012.

Filed Date: 08/15/2011.

Accession Number: 20110815–5165.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4315–000.

Applicants: Gila River Power, L.P.

Description: Gila River Power, L.P. submits tariff filing per 35: Gila River Power-Notice of Succession to MBR Rate Tariff to be effective 8/16/2011.

Filed Date: 08/15/2011.

Accession Number: 20110815–5175.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4316–000.

Applicants: Koch Supply & Trading, LP.

Description: Notice of Tariff Cancellation Filed on Behalf of Koch Supply & Trading, LP.

Filed Date: 08/15/2011.

Accession Number: 20110815–5207.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA11–10–000.

Applicants: Mesquite Solar 1, LLC.

Description: Application of Mesquite Solar 1, LLC for waivers of FERC's Open Access Transmission Tariff, OASIS, and Standards of Conduct requirements.

Filed Date: 08/15/2011.

Accession Number: 20110815–5133.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,

service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 16, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21689 Filed 8–24–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0719, FRL–9456–1]

Agency Information Collection Activities; Proposed Collection; Comment Request on Two Information Collection Requests

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit a request to renew two existing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of **SUPPLEMENTARY INFORMATION**.

DATES: Comments must be submitted on or before October 24, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2008–0719, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: ow-docket@epa.gov* (Identify Docket ID No. EPA–HQ–OW–2008–0719 in the subject line)
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three copies.
- *Hand Delivery:* EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. 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 identified by the Docket ID No. EPA–HQ–OW–2008–0719. 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. 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: Amelia Letnes, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5627; e-mail address: *letnes.amelia@epa.gov.*

SUPPLEMENTARY INFORMATION: *For All ICRS:*

An Agency may not conduct or sponsor, and a person is not required to respond to collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

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–2008–0719, 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 B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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.

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; 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.

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.

A. List of ICRS Planned To Be Submitted

(1) Information Collection Request for Cooling Water Intake Structures New Facility Final Rule (Renewal); EPA ICR No. 1973.05, OMB Control No. 2040–0241; expiration date 12/31/2011.

(2) National Pretreatment Program, EPA ICR Number 0002.14, OMB Control Number 2040–0009, expiration date 12/31/2011.

B. Individual ICRs

(1) Information Collection Request for Cooling Water Intake Structures New Facility Final Rule (Renewal); EPA ICR No. 1973.05, OMB Control No. 2040–0241; expiration date 12/31/2011.

Affected entities: Entities potentially affected by this action are new facilities that are point sources (*i.e.,* subject to a NPDES permit) that use or propose to use a cooling water intake structure (CWIS), have at least one cooling water intake structure that uses at least 25 percent (measured on an average monthly basis) of the water withdrawn for cooling purposes, withdraw the water from surface waters, and have a design intake flow greater than two million gallons per day (MGD). Generally, facilities that meet these criteria fall into two major groups: new power producing facilities and new manufacturing facilities. Power producers affected by the final rule are likely to be both utility and nonutility power producers since they typically have large cooling water requirements. EPA identified four categories of manufacturing facilities that tend to require large amounts of cooling water: paper and allied products, chemical and allied products, petroleum and coal products, and primary metals. However, the New Facility Rule is not limited to manufacturers in these sectors; any new manufacturer that meets the criteria above is subject to the rule.

Abstract: The section 316(b) New Facility Rule requires the collection of information from new facilities that use a CWIS and meet the other eligibility requirements. Section 316(b) of the CWA requires that any standard established under section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction and capacity of CWISs at that facility reflect the best technology available (BTA) for minimizing adverse environmental impact. See 66 FR 65256. Such impact occurs as a result of impingement (where fish and other aquatic life are trapped on technologies at the entrance to cooling water intake structures) and entrainment (where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then pumped back out with the discharge from the facility). The rule establishes standard requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. These requirements seek to minimize the adverse environmental impact associated with the use of CWISs.

Burden Statement: The annual average reporting and recordkeeping burden for the collection of information by facilities responding to the section 316(b) New Facility Rule is estimated to be 1,620 hours per respondent (*i.e.,* an annual average of 131,188 hours of burden divided among an anticipated annual average of 81 facilities). The State reporting and recordkeeping burden for the review, oversight, and administration of the rule is estimated to average 154 hours per respondent (*i.e.,* an annual average of 7,233 hours of burden divided among an anticipated 47 States on average per year).

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 86 facilities and 47 States and Territories.

Frequency of response: Annual, every 5 years.

Estimated total average number of responses for each respondent: 5.8 for facilities (467 annual average responses for 81 average facility respondents) and 8.9 for States and Territories (420 annual average responses for 47 average State respondents).

Estimated total annual burden hours: 138,421 (131,188 for facilities and 7,233 for States and Territories).

Estimated total annual costs: $10.6 million per year. This includes an estimated burden cost of $8.1 and an estimated cost of $2.5 for capital investment or maintenance and operational costs.

Change in Burden: There is an increase of 20,212 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase is due to the addition of the newly built facilities, as well as the continued performance of annual activities by facilities that received their permit during the previous ICR approval periods. In addition, this ICR includes additional repermitting burden and costs because more facilities are entering the renewal phase of their permits.

(2) National Pretreatment Program, EPA ICR Number 0002.14, OMB Control Number 2040–0009, expiration date 12/31/2011.

Affected entities: Various industrial categories, publicly owned treatment works (POTWs), local and State governments.

Abstract: This ICR calculates the burden and costs associated with managing and implementing the National Pretreatment Program as mandated under CWA sections 402(a) and (b) and 307(b). This ICR includes all existing tasks under the National Pretreatment Program, as amended by the EPA's Streamlining Rule.

EPA's Office of Wastewater Management (OWM) in the Office of Water (OW) is responsible for the management of the pretreatment program. The CWA requires EPA to develop national pretreatment standards to control discharges from Industrial Users (IUs) into POTWs. These standards limit the level of certain pollutants allowed in non-domestic wastewater that is discharged to a POTW. EPA administers the pretreatment program through the NPDES permit program. Under the NPDES permit program, EPA may approve State or individual POTW implementation of the pretreatment standards at their respective levels. Data collected from IUs during implementation of the pretreatment program include the mass, frequency,

and content of IU discharges and IU schedules for installing pretreatment equipment. Data also include actual or anticipated IU discharges of wastes that violate pretreatment standards, have the potential to cause problems at the POTW, or are considered hazardous under the Resource Conservation and Recovery Act (RCRA). OWM uses the data collected under the pretreatment program to monitor and enforce compliance with the pretreatment regulations, as well as to authorize program administration at the State or local (POTW) level. States and POTWs applying for approval of their pretreatment programs submit data concerning their legal, procedural, and administrative bases for establishing such programs. This information may include surveys of IUs, local limits for pollutant concentrations, and schedules for completion of major project requirements. IUs and POTWs submit written reports to the approved State or EPA. These data may then be entered into the NPDES databases by the approved State or by EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 73.1 hours per respondent per year, or 18.1 hours per response.

Estimated total number of potential respondents: 24,411 (36 States, 1,548 POTWs and 22,827 industrial users).

Frequency of response: On occasion, semi-annually, annually, and as needed.

Estimated total average number of responses for each respondent: 4.0.

Estimated total annual burden hours: 1,784,568 hours.

Estimated total annual costs: $76,773,776. This includes an estimated burden cost of $74,454,863 and an estimated cost of $2,318,913 for capital investment or maintenance and operational costs.

Change in Burden: There is a decrease of 12,5195 (0.7%) hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. Most of the decrease in burden is attributed to the decrease in the number of SIUs. EPA revised the estimated number of SIUs and pretreatment programs after extensive consultation with the EPA regions and a thorough examination of PCS data. This ICR shows a shift in burden from POTWs to States as a consequence of EPA's updated estimates of of SIUs regulated by POTWs and States. However, EPA does not believe this is the result of programmatic changes but simply a reflection of more accurate information about the implementation of the pretreatment program.

What is the next step in the process for these ICRs?

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: August 12, 2011.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 2011–21723 Filed 8–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9456–8; Docket ID No. EPA–HQ–ORD–2011–0425]

Draft Toxicological Review of Libby Amphibole Asbestos: In Support of the Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and listening session.

SUMMARY: EPA is announcing a 60-day public comment period and a public listening session for the external review draft human health assessment titled ''Toxicological Review of Libby Amphibole Asbestos: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–11/002A). The draft assessment was prepared by staff in both EPA's Region 8 Office (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, and 27 tribal nations), and the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD). EPA is releasing the draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's Information Quality Guidelines, and it does not represent and should not be construed to represent Agency policy or views. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice. The public comments submitted in accordance with this notice will be made available to the peer review panel.

The draft document is also being provided to EPA's Science Advisory Board (SAB), a body established under the Federal Advisory Committee Act, for independent external peer review. The public comment period and the EPA Science Advisory Board (SAB) peer-review, which will be scheduled at a later date and announced in the Federal Register, are separate processes that provide opportunities for all interested parties to comment on the document.

EPA is also announcing a listening session to be held on October 6, 2011 during the public comment period for this draft assessment. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties attending the listening session. EPA welcomes the scientific and technical comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment after the independent external peer review. If listening session participants would like EPA to share their comments with the external peer reviewers, they should also submit written comments during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The public comment period begins August 25, 2011, and ends October 24, 2011. Technical comments should be in writing and must be received by EPA by October 24, 2011.

The listening session on the draft IRIS health assessment for Libby Amphibole Asbestos will be held in Arlington, VA, on October 6, 2011, beginning at 1 p.m. and ending at 5 p.m., Eastern Daylight Time, or when the last presentation has been completed. If you would like to make a presentation at the listening session, you should register by September 29, 2011. To attend the listening session, register by September 29, 2011, by sending an e-mail to *IRISListeningSession@epa.gov* (subject line: Libby Amphibole Asbestos Listening Session); by calling Christine Ross at 703–347–8592; or by faxing a registration request to 703–347–8689. Please reference the ''Libby Amphibole Asbestos Listening Session'' and include your name, title, affiliation, full address, and contact information. To present at the listening session, indicate in your registration that you would like to make oral comments at the session and provide the length of your

presentation. When you register, please indicate if you will need audio-visual aid (e.g., laptop and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by September 29, 2011, the listening session will be cancelled and EPA will notify those registered of the cancellation.

Listening session participants who would like EPA to share their comments with the external peer reviewers should also submit written comments to the docket during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice. Comments submitted to the docket prior to the end of the public comment period will be considered by EPA in the disposition of public comments. Additionally, these comments will be made available to the SAB external peer reviewers. All comments must be submitted to the docket. Comments received after the public comment period closes will not be submitted to the external peer reviewers.

ADDRESSES: The draft ''Toxicological Review of Libby Amphibole Asbestos: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

The listening session on the draft Libby Amphibole Asbestos assessment will be held at the EPA offices at Two Potomac Yard (North Building), 7th Floor, Room 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. Please note that to gain entrance to this EPA building to attend the meeting, attendees must have photo identification with them and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number, 703–347–8592, to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188 and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 12:45 p.m, and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the Libby Amphibole Asbestos Listening Session and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross at 703–347–8592 or *IRISListeningSession@epa.gov.* To request accommodation of a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: For information on the federal docket, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For information on the public listening session, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment, (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8592; facsimile: 703–347–8689; or e-mail: *IRISListeningSession@epa.gov.*

If you have questions about the document, contact Danielle DeVoney, National Center for Environmental Assessment (NCEA, Mail Code: 8623P), U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (703) 347–8558; facsimile: 703–347–8693; or e-mail: *FRNQuestions@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

EPA's Integrated Risk Information System (IRIS) provides information about over 540 chemicals to which the public may be exposed from releases to air, water, and land and through the use and disposal of chemicals. IRIS assessments provide a scientific foundation for decisions to protect public health across EPA's programs and regions under an array of environmental laws. The IRIS database is publicly available online at *http://www.epa.gov/iris* and is used by state and local governments, environmental specialists, healthcare professionals, and international institutions to characterize the potential health effects of contaminant exposure. Over the past 2 years, EPA has strengthened and streamlined the IRIS program, improving transparency and increasing the number of final assessments added to the database. Continually improving the IRIS program is an ongoing priority for the Agency.

II. How To Submit Technical Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2011–0425 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments;
- *E-mail: ORD.Docket@epa.gov;*
- *Fax:* 202–566–1753;
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number is 202–566–1752; and
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center's 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0425. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if

time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

Dated: August 3, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–21722 Filed 8–24–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 11–1270]

Notice of Suspension and Commencement of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') gives notice of Mr. Barrett C. White's suspension from the schools and libraries universal service support mechanism (or ''E–Rate Program''). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. White, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Joy Ragsdale, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

DATES: Opposition requests must be received by September 26, 2011.

ADDRESSES: Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or September 26, 2011, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Joy Ragsdale, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Joy Ragsdale may be contacted by phone at (202) 418–1697 or e-mail at *Joy.Ragsdale@fcc.gov.* If Ms. Ragsdale is unavailable, you may contact Ms. Terry Cavanaugh, Acting Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Terry.Cavanaugh@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 11–1070, which was mailed to Mr. White and released on July 27, 2011. The complete text of the notice of suspension and initiation of debarment proceedings is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Theresa Z. Cavanaugh,

Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

The suspension letter follows:

July 27, 2011

DA 11–1270

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND FACSIMILE

Mr. Barrett C. White
c/o Mr. H. Thomas Murphy III
H. Thomas Murphy, LLC
1029 Milan Street
New Orleans, LA 70115

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–11–IH–1075

Dear Mr. White:

The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of conspiracy to defraud the United States in violation of 18 U.S.C § 371 in connection with your participation in the federal schools and libraries universal service support mechanism (''E–Rate program'').[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E–Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that the Bureau will commence debarment proceedings against you.[2]

[1] Any further reference in this letter to ''your conviction'' refers to your conviction of count one in Case No. 10–324–L. *United States* v. *Barrett C. White,* Criminal Docket No. 10–324–L, Judgment (E.D.LA. filed June 9, 2011) (''*Judgment*'').

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal

Continued

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] On March 3, 2011, you entered a plea agreement and pleaded guilty to intentionally conspiring with others to defraud and obtain money from the federal E–Rate Program.[4] Specifically, on behalf of your co-conspirators'[5] company, Global Network Technologies, Inc. (''GNT''), beginning approximately February 2004 through August 2005 you offered and delivered $28,500 in bribes and kickbacks to various school officials in exchange for ceding control of the schools' E–Rate program to GNT and CTA.[6] You also accepted fraudulent billing invoices from a school employee for services never provided by the employee,[7] and concealed the source of your payments to school officials by paying them from a bank account not readily associated with your co-conspirators or their companies.[8] These actions constitute the conduct or transactions upon which this suspension notice and proposed debarment proceeding is based.[9]

On June 9, 2011, you were sentenced to serve one year and one day in prison, followed by a two year period of supervised release, for conspiring to defraud the federal E–Rate program in multiple states.[10] You also were ordered to pay a $4,000 fine for your role in the conspiracy scheme.[11]

Pursuant to § 54.8(b) of the Commission's rules,[12] upon your conviction, the Bureau is required to suspend you from participating in any activities associated with or related to the schools and libraries support mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[13] Your suspension becomes effective upon receipt of this letter, or publication of the notice in the **Federal Register,** whichever comes first.[14]

In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments, along with any relevant documents, within 30 calendar days after receipt of this letter, or after notice is published in the **Federal Register,** whichever comes first.[15] Such requests, however, will not ordinarily be granted.[16] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[17] Absent extraordinary circumstances, the Bureau will decide any request to reverse or modify a suspension within 90 calendar days of its receipt of such request.[18]

II. Initiation of Debarment Proceedings

As discussed above, your guilty plea and conviction of criminal conduct in connection with the E-Rate program serves as a basis for immediate suspension from the program, as well as a basis to commence debarment proceedings against you. Conviction of criminal fraud is a cause for debarment as defined in § 54.8(c) of the Commission's rules.[19] Therefore, pursuant to § 54.8(b) of the rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with the suspension process, you may contest the debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of receipt of this letter or publication in the **Federal Register,** whichever comes first.[20] The Bureau, in the absence of extraordinary circumstances, will notify you of its decision to debar within 90 calendar days of receiving any information you may have filed.[21] If the Bureau decides to debar you, its decision will become effective upon either your receipt of a debarment notice or publication of the decision in the **Federal Register,** whichever comes first.[22]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[23] The Bureau may set a longer debarment period if necessary to protect the public interest.[24]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, D.C. 20554, to the attention of Joy M. Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–A236, with a copy to Theresa Z. Cavanaugh, Acting Division Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C322, Federal Communications Commission. All messenger or hand-delivery filings must be submitted without envelopes.[25] If sent by commercial overnight mail (other than U.S. Postal Service (USPS) Express Mail and Priority Mail), the response must be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by USPS First Class, Express Mail, or Priority Mail, the response should be addressed to Joy Ragsdale, Attorney Advisor, Investigations

service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order*'') (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (''*Program Management Order*'') (section 54.521 of the universal service debarment rules was renumbered as section 54.8 and subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g) were amended.)

[3] *Second Report and Order,* 18 FCC Rcd at 9225, paragraph 66; *Program Management Order,* 22 FCC Rcd at 16387, paragraph 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 CFR 54.8(a)(6).

[4] *United States* v. *Barrett C. White,* Criminal Case No. 10–324–L, Judgment at 2 (E.D.LA. filed June 9, 2011).

[5] By letter, the Bureau will serve notice of suspension and initiation of debarment proceedings to Tyrone D. Pipkin, a partner in CTA, who pleaded guilty and was convicted on June 21, 2011 for his role in the conspiracy. The Bureau will also serve notice of suspension and initiation of debarment proceedings to Gloria F. Harper, who pleaded guilty to conspiracy on June 2, 2011, and awaits sentencing. *See* Justice News, **Dep't of Justice,** Owner of Illinois Technology Company Sentenced to Serve 12 Months and a Day in Prison for Role in Conspiracy to Defraud the Federal E–Rate Program, June 9, 2011, *at* http://www.justice.gov/opa/pr/2011/June/11-at-755.html (''*Press Release*'').

[6] *United States* v. *Barrett C. White,* Criminal Case No. 10–324–L, Factual Basis at 2 (E.D.LA. filed Mar. 3, 2011) (''*Factual Basis*''). CTA and GNT marketed and provided E–Rate services to schools in Arkansas and Louisiana. *Id.; United States* v. *Barrett C. White,* Criminal Case No. 10–324–L, Information at 2 (E.D.LA. filed Nov. 18, 2011) (''*Information*'').

[7] Information at 4.

[8] Factual Basis at 2–3.

[9] *Second Report and Order,* 18 FCC Rcd at 9226, paragraph. 70; 47 CFR 54.8(e)(2)(i).

[10] *Press Release* at 1; *Judgment* at 3.

[11] *Judgment* at 5. You were also ordered to immediately pay a Special Assessment of $100. *Id.*

[12] 47 CFR 54.8(b). *See Second Report and Order,* 18 FCC Rcd at 9225–9227, paragraphs 67–74.

[13] 47 CFR 54.8(a)(1), (d).

[14] *Second Report and Order,* 18 FCC Rcd at 9226, paragraph 69; 47 CFR 54.8(e)(1).

[15] 47 CFR 54.8(e)(4).

[16] *Id.*

[17] 47 CFR 54.8(f).

[18] *Second Report and Order,* 18 FCC Rcd at 9226, paragraph 70; 47 CFR 54.8(e)(5), (f).

[19] ''Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Associated activities ''include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanisms.'' 47 CFR 54.8(a)(1).

[20] *Second Report and Order,* 18 FCC Rcd at 9226, paragraph 70; 47 CFR 54.8(e)(3).

[21] *Id.,* 18 FCC Rcd at 9226, paragraph 70; 47 CFR 54.8(e)(5).

[22] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[23] *Second Report and Order,* 18 FCC Rcd at 9225, paragraph 67; 47 CFR 54.8(d), (g).

[24] *Id.*

[25] *See* FCC *Public Notice,* DA 09–2529 for further filing instructions (rel. Dec. 3, 2009).

and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4–A236, Washington, D.C. 20554, with a copy to Theresa Z. Cavanaugh, Acting Division Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C322, Washington, D.C. 20554. You shall also, to the extent practicable, transmit a copy of the response via email to Joy M. Ragsdale, *joy.ragsdale@fcc.gov* and to Theresa Z. Cavanaugh, *Terry.Cavanaugh@fcc.gov.*

If you have any questions, please contact Ms. Ragsdale via U.S. postal mail, e-mail, or telephone at (202) 418–7931. You may contact me at (202) 418–1420 or at the email addressed noted above if Ms. Ragsdale is unavailable.

Sincerely yours,

Theresa Z. Cavanaugh,

Acting Chief, Investigations and Hearings Division Enforcement Bureau.

cc: Johnnay Schrieber, Universal Service Administrative Company (via e-mail) Rashann Duvall, Universal Service Administrative Company (via email) Juan Rodriguez, Antitrust Division, United States Department of Justice (via e-mail) Stephanie Toussaint, Antitrust Division, United States Department of Justice (via e-mail)

[FR Doc. 2011–21733 Filed 8–24–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0162)

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 an existing information collection, as required by the PRA. On June 8, 2011 (76 FR 33284), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Large Bank Deposit Insurance Programs (3064–0162). 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 September 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. 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 address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collection of information:

Title: Large Bank Deposit Insurance Programs.

OMB Number: 3064–0162.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions having at least $2 billion in domestic deposits and either at least (i) 250,000 deposit accounts; or (ii) $20 million in total assets.

Estimated Number of Respondents: 159.

Estimated Time per Response: 80 hours to 75,000 hours.

Total Annual Burden: 312,500 hours to 625,000 hours.

General Description of Collection: The Federal Deposit Insurance Act requires proposed financial institutions to apply to the FDIC to obtain deposit insurance. This collection provides the FDIC with the information needed to evaluate the applications.

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 August, 2011.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2011–21730 Filed 8–24–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995 and 5 CFR 1320.16, the Board of Governors of the Federal Reserve System (''Board'') is proposing new information collections for savings and loan holding companies (''SLHCs''). On July 21, 2011, the responsibility for supervision and regulation of SLHCs transferred from the Office of Thrift Supervision (''OTS'') to the Board pursuant to section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').

DATES: Comments must be submitted on or before November 1, 2011.

ADDRESSES: You may submit comments, identified by *FR Y–6, FR Y–7, FR Y–9 reports, FR Y–11/11S, FR 2314/2314S, FR Y–8, FR Y–12/12A, FR Y–7Q, or FR Y–7N/NS,* 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 docket 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 form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer 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: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR Part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposal to revise under OMB delegated authority without extension the following reports. Currently, the Board collects certain consolidated information from bank holding companies (''BHCs'') and qualifying FBOs (''foreign banking organizations''). These collections are itemized below. This proposal, as discussed in more detail below, would revise these reporting panels to include SLHCs in the same manner as BHCs.

1. *Report title:* The Annual Report of Bank Holding Companies and the Annual Report of Foreign Banking Organizations.

Agency form number: FR Y–6 and FR Y–7.

OMB control number: 7100–0297.

Frequency: Annual.

Reporters: FR Y–6: Top-tier domestic BHCs; FR Y–7: FBOs.

Estimated annual reporting hours: FR Y–6: 28,796; FR Y–7: 713.

Estimated average hours per response: FR Y–6: 5.25 hours; FR Y–7: 3.75.

Number of respondents: FR Y–6: 5,485; FR Y–7: 190.

General description of report: These information collections are mandatory under the Federal Reserve Act, the Bank Holding Company Act (BHC Act), and the International Banking Act (12 U.S.C. 248(a)(1), 602, 611a, 1844(c)(1)(A), 3106(a), and 3108(a)), and Regulations K and Y (12 CFR 211.13(c), 225.5(b)). Individual respondent data are not considered confidential. However, respondents may request confidential treatment for any information that they believe is subject to an exemption from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552(b).

Abstract: The FR Y–6 is an annual information collection submitted by top-tier BHCs and nonqualifying FBOs. It collects financial data, an organization chart, verification of domestic branch data, and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company compliance with the provisions of the BHC Act and Regulation Y (12 CFR part 225). The FR Y–7 is an annual information collection submitted by qualifying FBOs to update their financial and organizational information with the Federal Reserve. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with U.S. laws and regulations.

2. *Report title:* Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually.

Reporters: Bank holding companies.

Estimated annual reporting hours: FR Y–9C: 210,399; FR Y–9LP: 31,689; FR Y–9SP: 47,790; FR Y–9ES: 49; FR Y–9CS: 472.

Estimated average hours per response: FR Y–9C: 45.15; FR Y–9LP: 5.25; FR Y–9SP: 5.40; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Number of respondents: FR Y–9C: 1,165; FR Y–9LP: 1,509; FR Y–9SP: 4,425; FR Y–9ES: 98; FR Y–9CS: 236.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)(1)(A)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6), and (b)(8) of FOIA (5 U.S.C. 522(b)(4), (b)(6), and (b)(8)).

Abstract: The FR Y–9C and the FR Y–9LP are standardized financial

statements for the consolidated BHC and its parent. The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on-site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from BHCs. The FR Y–9C is filed by top-tier BHCs with total consolidated assets of $500 million or more. (Under certain circumstances defined in the General Instructions, BHCs under $500 million may be required to file the FR Y–9C.)

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed by smaller BHCs. Respondents include BHCs with total consolidated assets of less than $500 million. This form is a simplified or abbreviated version of the more extensive parent company only financial statement for large BHCs (FR Y–9LP). This report is designed to obtain basic balance sheet and income information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9ES collects financial information from Employee Stock Ownership Plans that are also BHCs on their benefit plan activities. It consists of four schedules: Statement of Changes in Net Assets Available for Benefits, Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The FR Y–9CS is a supplemental report that may be utilized to collect additional information deemed to be critical and needed in an expedited manner from BHCs. The information is used to assess and monitor emerging issues related to BHCs. It is intended to supplement the FR Y–9 reports, which are used to monitor BHCs between on-site inspections. The data items of information included on the supplement may change as needed.

3. Financial Statements for Nonbank Subsidiaries of U.S. Bank Holding Companies.

Agency form number: FR Y–11 and FR Y–11S.

OMB control number: 7100–0244.

Frequency: Quarterly and annually.

Reporters: Bank holding companies.

Estimated annual reporting hours: FR Y–11 (quarterly): 18,088; FR Y–11 (annual): 3,658; FR Y–11S: 1,033.

Estimated average hours per response: FR Y–11 (quarterly): 6.8; FR Y–11 (annual): 6.8; FR Y–11S: 1.0.

Number of respondents: FR Y–11 (quarterly): 665; FR Y–11 (annual): 538; FR Y–11S: 1,033.

General description of report: This information collection is mandatory (12 U.S.C. §§ 1844(c)(1)(A). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6)and (b)(8) of FOIA [5 U.S.C. 522(b)(4), (b)(6) and (b)(8)].

Abstract: The FR Y–11 reports collect financial information for individual non-functionally regulated U.S. nonbank subsidiaries of domestic BHCs. BHCs file the FR Y–11 on a quarterly or annual basis according to filing criteria. The FR Y–11 data are used with other BHC data to assess the condition of BHCs that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

The FR Y–11S is an abbreviated reporting form that collects four data items: Net income, total assets, equity capital, and total off-balance-sheet data items. The FR Y–11S is filed annually, as of December 31, by top-tier BHCs for each individual nonbank subsidiary (that does not meet the criteria for filing the detailed report) with total assets of at least $50 million, but less than $250 million, or with total assets greater than 1 percent of the total consolidated assets of the top-tier organization.

4. Report title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314 and FR 2314S.

OMB control number: 7100–0073.

Frequency: Quarterly and annually.

Reporters: Foreign subsidiaries of U.S. state member banks, bank holding companies, and Edge or agreement corporations.

Estimated annual reporting hours: FR 2314 (quarterly): 19,483; FR 2314 (annual): 4,415; FR 2314S: 1,047.

Estimated average hours per response: FR 2314 (quarterly): 6.6; FR 2314 (annual): 6.6; FR 2314S: 1.0.

Number of respondents: FR 2314 (quarterly): 738; FR 2314 (annual): 669; FR 2314S: 1,047.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, and 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of FOIA [5 U.S.C. 522(b)(4) (b)(6) and (b)(8)].

Abstract: The FR 2314 reports collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks (SMBs), Edge and agreement corporations, and BHCs. Parent organizations (SMBs, Edge and agreement corporations, or BHCs) file the FR 2314 on a quarterly or annual basis according to filing criteria. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

The FR 2314S is an abbreviated reporting form that collects four data items: Net income, total assets, equity capital, and total off-balance-sheet data items. The FR 2314S is filed annually, as of December 31, for each individual subsidiary (that does not meet the criteria for filing the detailed report) with assets of at least $50 million but less than $250 million, or with total assets greater than 1 percent of the total consolidated assets of the top-tier organization.

5. Report title: Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates.

Agency form number: FR Y–8.

OMB control number: 7100–0126.

Frequency: Quarterly.

Reporters: Top-tier BHCs, including financial holding companies (FHCs), for all insured depository institutions that are owned by the BHC and by FBOs that directly own a U.S. subsidiary bank.

Estimated annual reporting hours: 56,001 hours.

Estimated average hours per response: Institutions with covered transactions, 7.8 hours; Institutions without covered transactions, 1.0 hour.

Number of respondents: Institutions with covered transactions, 1,134; Institutions without covered transactions, 5,155.

General description of report: This information collection is mandatory (section 5(c) of the BHC Act (12 U.S.C. 1844(c)(1)(A) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This reporting form collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act. The primary purpose of the data is to enhance the Federal Reserve's ability to monitor bank exposures to affiliates and to ensure banks' compliance with section 23A of the Federal Reserve Act. Section 23A of the Federal Reserve Act is one of the most important statutes on limiting exposures to individual institutions and protecting against the expansion of the federal safety net.

6. Report title: Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies, and the Annual Report of Merchant Banking Investments Held for an Extended Period.

Agency form number: FR Y–12 and FR Y–12A, respectively.

OMB control number: 7100–0300.

Frequency: FR Y–12, quarterly and semiannually; and FR Y–12A, annually.

Reporters: Bank holding companies and financial holding companies.

Estimated annual reporting hours: FR Y–12, 1,980 hours; and FR Y–12A, 126 hours.

Estimated average hours per response: FR Y–12, 16.5 hours; and FR Y–12A, 7.0 hours.

Number of respondents: FR Y–12, 35; and FR Y–12A, 18.

General description of report: This collection of information is mandatory pursuant to Section 5(c) of the BHC Act (12 U.S.C. 1844(c)(1)(A)). The FR Y–12 data are not considered confidential. However, BHCs may request confidential treatment for any information that they believe is subject to an exemption from disclosure under FOIA, 5 U.S.C. 552(b). The FR Y–12A data are considered confidential on the basis that disclosure of specific commercial or financial data relating to investments held for extended periods of time could result in substantial harm to the competitive position of the financial holding company pursuant to the FOIA (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR Y–12 collects information from certain domestic BHCs on their equity investments in nonfinancial companies. Respondents report the FR Y–12 either quarterly or semi-annually based on reporting threshold criteria. The FR Y–12A is filed annually by institutions that hold merchant banking investments that are approaching the end of the holding period permissible under Regulation Y.

7. Report title: The Capital and Asset Report of Foreign Banking Organizations, and the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations.

Agency form number: FR Y–7Q, FR Y–7N and FR Y–7NS, respectively.

OMB control number: 7100–0125.

Frequency: Quarterly and annually.

Reporters: Foreign bank organizations.

Estimated annual reporting hours: FR Y–7Q (quarterly): 315; FR Y–7Q (annual): 118; FR Y–7N (quarterly): 5,331; FR Y–7N (annual): 1,455; FR Y–7NS: 299.

Estimated average hours per response: FR Y–7Q (quarterly): 1.25; FR Y–7Q (annual): 1.0; FR Y–7N (quarterly): 6.8; FR Y–7N (annual): 6.8; FR Y–7NS: 1.0.

Number of respondents: FR Y–7Q (quarterly): 63; FR Y–7Q (annual): 118; FR Y–7N (annual): 196; FR Y–7N (annual): 214; FR Y–7NS: 299.

General description of report: The FR Y–7Q and FR Y–7N information collections are mandatory (12 U.S.C. 1844(c)(1)(A), 3106(c), and 3108). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act. [5 U.S.C. 522(b)(4) and (b)(6)].

Abstract: The FR Y–7Q collects consolidated regulatory capital information from all FBOs either quarterly or annually. FBOs that have effectively elected to become FHCs file the FR Y–7Q quarterly. All other FBOs (those that have not elected to become FHCs) file the FR Y–7Q annually. The FR Y–7N collects financial information for nonfunctionally regulated U.S. nonbank subsidiaries held by FBOs other than through a U.S. BHC, U.S. FHC or U.S. bank. FBOs file the FR Y–7N on a quarterly or annual basis. The FR Y–7NS collect financial information for nonfunctionally regulated U.S. nonbank subsidiaries held by FBOs other than through a U.S. BHC, U.S. FHC, or U.S. bank. The FR Y–7NS is filed annually, as of December 31, by top-tier FBOs for each individual nonbank subsidiary (that does not meet the filing criteria for filing the detailed report) with total assets of at least $50 million, but less than $250 million.

Current Actions. The Dodd-Frank Act was enacted into law on July 21, 2010. Title III of the Dodd-Frank Act abolishes the OTS and transferred all former OTS authorities (including rulemaking) related to SLHCs to the Federal Reserve effective as of July 21, 2011. The Federal Reserve is responsible for the consolidated supervision of SLHCs beginning July 21, 2011.

Consolidated data currently collected from BHCs assist the Federal Reserve in the identification and evaluation of significant risks that may exist in a diversified holding company. The data also assist the Federal Reserve in determining whether an institution is in compliance with applicable laws and regulations. The Federal Reserve believes that it is important that any company that owns and operates a depository institution be held to appropriate standards of capitalization, liquidity, and risk management. Consequently, it is the Federal Reserve's intention that, to the greatest extent possible, taking into account any unique characteristics of SLHCs and the requirements of the Home Owners' Loan Act (HOLA), supervisory oversight of SLHCs should be carried out on a comprehensive consolidated basis, consistent with the Federal Reserve's established approach regarding BHC supervision. The proposed revisions would provide data to analyze the overall financial condition of most SLHCs to ensure safe and sound operations.

On February 8, 2011, the Federal Reserve published in the **Federal Register** a notice of intent (NOI) to require SLHCs to submit the same reports as BHCs, beginning with the March 31, 2012, reporting period. The NOI stated that the Board would issue a formal proposed notice on information collection activities for SLHCs after the transfer date.

The comment period for the NOI ended on April 11, 2011, and the Federal Reserve received ten comment letters from five trade associations, two insurance companies, one law firm, one commercial company and one utility SLHC. Most respondents expressed concern with the implementation deadline of March 31, 2012, and requested a delay. All respondents stated concern with implementation cost and burden associated with creation of new systems, processes and internal controls. Some respondents that represented insurance companies or grandfathered unitary SLHCs currently engaged in commercial activities strongly encouraged the Federal Reserve to reconsider its proposal noting that a ''one-size-fits-all'' approach would be far more costly than the benefits derived. Insurance companies stated the

requirement to file BHC reports, which are based on U.S. generally accepted accounting principles (GAAP), would cause the creation of duplicative accounting systems due to state mandated requirements to compile financial statements using statutory accounting principles (SAP), especially for insurance companies that use SAP exclusively or use GAAP on a limited basis. Some respondents also noted that grandfathered unitary SLHCs are not subject to the same restrictive activities applicable to BHCs under the BHC Act and, therefore, they reasoned SLHCs should not file the FR Y–10, Report of Change in Organizational Structure (OMB No. 7100–0297), or at a minimum the activity codes should be modified. Lastly, a few respondents stated they prepare their financial statements on a basis different from a calendar year-end basis. They contend that imposing calendar year reporting would add complexity to their financial reporting infrastructure and asked for confidential treatment for a period of time.

After consideration of the comments received on the NOI, the Federal Reserve proposes to exempt a limited number of SLHCs from initial regulatory reporting using the Federal Reserve existing regulatory reports and providing a two year phase-in approach for regulatory reporting for all other SLHCs.[1] The reporting panels for the above listed reports would be revised to include SLHCs.

The proposed revisions would provide data to analyze the overall financial condition of SLHCs to ensure safe and sound operations. Reporting requirements for BHCs would not be affected by this proposal. The Federal Reserve also proposes to revise other regulatory reports filed by BHCs to include SLHCs in the reporting panels going forward, as needed for supervisory purposes.[2] No other revisions are proposed for these information collections.

Proposed Transition to BHC Reporting Forms

After considering the comments received on the NOI, the Federal Reserve proposes to exclude certain SLHCs from reporting and allow phased-in reporting for most SLHCs as described below.

Excluded SLHCs

The Federal Reserve believes that there are a limited number of SLHCs where immediate transition to BHC regulatory reports is not appropriate. As a result, the Federal Reserve proposes to initially exempt SLHCs in either of the following categories from reporting using the Federal Reserve's BHC reports:

- SLHCs that are exempt pursuant to section 10(c)(9)(C) of HOLA and whose savings association subsidiaries' consolidated assets make up less than 5 percent of the total consolidated assets of the SLHC as of the quarter end prior to the reporting date quarter end;[3] or
- SLHCs where the top-tier holding company is an insurance company that only prepares SAP financial statements.

Specifically, the Federal Reserve has concluded it is not reasonable at this time to require standardized regulatory reports from SLHCs that are exempt pursuant to section 10(c)(9)(C) of HOLA[4] and whose savings association subsidiaries consolidated assets make up less than 5 percent of the total consolidated assets of the SLHC as of the quarter end prior to the reporting date quarter end. The Federal Reserve has identified a limited number of these companies that are either principally engaged in commercial activities (such as manufacturing or merchandizing) or are engaged in activities not specifically allowed by financial holding companies (such as real estate development). In many cases, applying bank-centric reporting to these disparate companies may provide little useful information to Federal Reserve analysts. For exempt SLHCs, the Federal Reserve would rely on reports provided to other regulators, such as the Securities and Exchange Commission (SEC), and supervisory information gathered by examiners from the parent organization. The Federal Reserve believes that it is prudent to re-evaluate reporting requirements for all SLHCs that are exempt pursuant to section 10(c)(9)(C) of HOLA after the Federal Reserve has more experience with supervision of these companies.

Additionally, the Federal Reserve believes that there would only be a limited number of SLHCs that are insurance companies that could not develop reporting systems to comply with the Federal Reserve's existing reporting requirements within a reasonable period of time or without incurring inordinate expense. Currently, certain SLHCs where the top-tier holding company is an insurance company that is not a reporting company with the SEC are not required to produce consolidated financial information. These SLHCs prepare financial statements using SAP. After considering comments received from these entities, the Federal Reserve believes that requiring these companies to quickly build a duplicate accounting system that is GAAP-based in order to produce reports in the required manner for the Federal Reserve is not justifiable at this time. Until the consolidated regulatory capital rules are finalized for SLHCs, the Federal Reserve would rely on supervisory information and the reports these companies submit to the state insurance regulators and the National Association of Insurance Commissioners (NAIC). The Federal Reserve will re-evaluate the regulatory reporting requirements for these institutions once the consolidated regulatory capital rules are finalized and may require GAAP-based reporting at that time.

The Federal Reserve believes that there may be a few SLHCs that do not meet the exemption criteria that nonetheless would be unreasonable to require standardized regulatory reporting beginning in March 2012. These SLHCs will be reviewed on a case-by-case basis to determine if they will be required to submit Federal Reserve regulatory reports. Conversely, other SLHCs who currently meet the exemption criteria will be reviewed on a case-by-case basis to determine if they should be required to submit Federal Reserve regulatory reports.

All exempt SLHCs would be required to continue to submit the existing Schedule HC, currently in the TFR, and the OTS Form H–(b)11 until further

[1] All SLHCs would continue to submit all currently required OTS reports, the Schedule HC—Thrift Holding Companies as part of the Thrift Financial Report (TFR) and the H-(b)11, through December 31, 2011, reporting period, using the existing processing, editing and validating system, which is the Electronic Filing System (EFS) established by the OTS. Effective for 2012, all SLHCs would still be required to report the HOLA H-(b)11 report (OTS Form H-(b)11; OMB No. 7100–0334) with the Federal Reserve. In addition, SLHCs that are initially exempt from reporting using the Federal Reserve's regulatory reports would still be required to report Thrift Financial Report Schedule HC (OTS 1313; OMB No. 1557–0255) and the Federal Reserve's FR Y–6 and FR Y–7 regulatory reports. Details about how SLHCs will submit TFR Schedule HC to the Federal Reserve effective for 2012 will be described in a separate notice in the **Federal Register** later this year. Additionally, the Federal Reserve will issue a transmittal letter later this year with information regarding the submission of the HOLA H-(b)11 report.

[2] In addition, the Federal Reserve plans to issue a separate reporting proposal for the FR Y–10 report later in 2011 or early in 2012 that will address the Federal Reserve's plans to collect organizational structure and activity information from SLHCs in order to populate its National Information Center (NIC) data base with a comprehensive list of subsidiaries and affiliates of each SLHC.

[3] For example, the asset size test for the March 31, 2012 reporting period would be based on December 31, 2011, assets. The asset size test for June 30, 2012, would be based on March 31, 2012, assets.

[4] These SLHCs are referred to as ''grandfathered unitary savings and loan holding companies.''

notice.[5] All exempt SLHCs would also be required to file the FR Y–6 and FR Y–7 beginning with fiscal year ends beginning December 31, 2012.

All Other SLHCs

For all SLHCs that are not excluded from reporting, the Federal Reserve believes a phased-in approach should allow the SLHCs to develop reporting systems over a period of time and would reduce the risk of data quality concerns. The phase-in approach would take two years to implement and would begin no sooner than the March 31, 2012, reporting period, when savings associations are required to file the Call Report. Reporting requirements for BHCs would not be affected by this proposal. A detailed discussion follows.

During 2012, SLHCs that are not excluded above would be required to submit the FR Y–9 series of reports and one of two year-end annual reports (FR Y–6 or FR Y–7 reports).[6] During 2013, these SLHCs would be required to submit all BHC regulatory reports that are applicable to the SLHC, depending on the size, complexity and nature of the holding company. All SLHCs submitting reports to the Federal Reserve would also continue to submit the Form H–(b)11 until further notice.

The Federal Reserve understands that SLHCs that are not exempt from activity limitations pursuant to section 10(c)(9)(C) of HOLA are typically traditional in the context of their structure and activities and are very similar to BHCs. As a result, the Federal Reserve believes that these SLHCs should be able to develop the appropriate reporting systems if they are given an adequate amount of time and the benefit of systematic development through a phased-in approach. These SLHCs may engage in substantial activities outside of operating savings associations but that are permissible for non-exempt SLHCs, such as broker-dealer services and insurance.

Although a number of comments were received from SLHCs that are also state-regulated insurance companies, the Federal Reserve believes that many of these SLHCs should be able to develop systems to comply with the Federal Reserve's reporting requirements. If a SLHC, including state-regulated insurance companies, is a reporting company with the SEC, it is required to prepare GAAP-based financial statements and should be able to report to the Federal Reserve.

[5] See footnote 1.

[6] SLHCs that must file the FR Y–9C report would not be required to complete Schedule HC–R, Regulatory Capital, until consolidated regulatory capital requirements for SLHCs are established.

Board of Governors of the Federal Reserve System, August 22, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–21736 Filed 8–24–11; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-FTR–Docket No. 2011–0002; Sequence 7]

Maximum Per Diem Rates for the Continental United States (CONUS)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 12–01, Fiscal Year (FY) 2012 Continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration's (GSA) annual per diem review has resulted in lodging and meal allowance changes for locations within CONUS to provide for the reimbursement of Federal employees' per diem expenses. This Per Diem Bulletin updates the maximum per diem amounts in existing per diem localities. The CONUS per diem rates prescribed in Bulletin 12–01 may be found at *http://www.gsa.gov/perdiem.* GSA bases the lodging per diem rates on the average daily rate that the lodging industry reports to an independent organization. The use of such data in the per diem rate setting process enhances the Government's ability to obtain policy-compliant lodging where it is needed. In conjunction with the annual lodging study, GSA identified one new non-standard area (NSA): Alexandria/Leesville/Natchitoches, Louisiana (Allen, Jefferson Davis, Natchitoches, Rapides, and Vernon Parishes). In addition, GSA reviewed all of the locations that changed from a NSA to the standard CONUS designation in FY 2011. Of those locations, the following areas will once again become NSAs in FY 2012: Montgomery, Alabama (Montgomery and Autauga Counties); Ocala, Florida (Marion County); Michigan City, Indiana (LaPorte County); Benton Harbor, Michigan (Berrien County); Mackinac Island, Michigan (Mackinac County); Mount Pleasant, Michigan (Isabella County); Jefferson City, Missouri (Cole County); and Sheboygan, Wisconsin (Sheboygan County).

If a per diem rate is insufficient to meet necessary expenses in any given location, Federal executive agencies can request that GSA review that location. Please review numbers five and six of GSA's per diem Frequently Asked Questions at (*http://www.gsa.gov/perdiemfaqs*) for more information on the special review process.

In addition, the Federal Travel Regulation allows for actual expense reimbursement as directed in § 301–11.300 through 301–11.306.

DATES: This notice is effective October 1, 2011, and applies for travel performed on or after October 1, 2011, through September 30, 2012.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jill Denning, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management, at (202) 208–7642, or by e-mail at *travelpolicy@gsa.gov.* Please cite Notice of Per Diem Bulletin 12–01.

SUPPLEMENTARY INFORMATION:

A. Background

After analyzing recent lodging data, GSA determined that lodging rates for certain localities do not adequately reflect the current lodging markets. GSA used the same lodging rate setting methodology for establishing the FY 2012 per diem rates as it did when establishing the FY 2011 rates.

GSA issues and publishes the CONUS per diem rates, formerly published in Appendix A to 41 CFR Chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem.* This process, implemented in 2003, ensures more timely changes in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 18, 2011.

Janet Dobbs,

Director, Office of Travel, Transportation & Asset Management.

[FR Doc. 2011–21710 Filed 8–24–11; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the

Department of Health and Human Services (DHHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public. Preregistration is required for both public attendance and comment. Individuals who wish to attend the meeting and/or participate in the public comment session should register at *http://www.hhs.gov/nvpo/nvac,* e-mail *nvpo@hhs.gov* or call 202–690–5566 and provide name, organization, and e-mail address.

DATES: The meeting will be held on September 13–14, 2011. The meeting times and agenda will be posted on the NVAC Web site at *http://www.hhs.gov/nvpo/nvac* as soon they become available.

ADDRESSES: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, U.S. Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. *Phone:* (202) 690–5566; *Fax:* (202) 690–4631; *e-mail: nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The topics to be discussed at the NVAC meeting will include seasonal influenza, implementation of the National Vaccine Plan, and vaccine safety. The meeting agenda will be posted on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac* prior to the meeting.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the National Vaccine Program Office at the address/phone listed above at least one week prior to the meeting. Members of the public will have the opportunity to provide comments at the NVAC meeting, limited to five minutes per speaker, during the public comment periods on the agenda. Individuals who would like to submit written statements should e-mail or fax their comments to the National Vaccine Program Office at least five business days prior to the meeting.

Dated: August 22, 2011.

Bruce Gellin,

Director, National Vaccine Program Office, Executive Secretary, National Vaccine Advisory Committee.

[FR Doc. 2011–21737 Filed 8–24–11; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0794]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Transgender HIV Behavioral Survey (THBS)—Reinstatement with changes (expired December 31, 2010)—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention requests approval of a Reinstatement with change of a previously approved collection, 0920–0794 Transgender HIV Behavioral Survey (THBS)—(expired December 31, 2010), for a period of 3 years. The previously approved project was a pilot. The purpose of this request is to conduct a behavioral survey among male-to-female transgender persons to assess prevalence of and trends in: (1) Risk behaviors for HIV infection, (2) HIV testing behaviors, and (3) exposure to, use of, and impact of HIV prevention services. The results of this data collection will be used to assess progress toward CDC's goals to increase the proportion of people who consistently engage in behaviors that reduce risk of HIV transmission or acquisition; and to monitor behaviors that increase the risk of HIV infection (among those who are not infected).

For the proposed data collection, the eligibility screener and the behavioral assessment instruments used for the previously approved pilot was shortened and a recruiter debriefing instrument added. The project activities and methods will remain the same as those used in the previously approved pilot.

Data will be collected through in-person, computer-assisted interviews conducted by trained interviewers in 5 Metropolitan Statistical Areas (MSA) or MSA Divisions in the United States. The MSAs chosen will be among those currently participating in the National HIV Behavioral Surveillance system (see **Federal Register** dated January 19, 2007: Vol. 72, No. 12, pages 2529–2530).

Respondent Driven Sampling (RDS) will be used to recruit participants. Except for a few initial recruits, persons will be recruited by peers for participation in THBS. A screener questionnaire will be used to determine eligibility for participation. In one year, approximately 1,100 individuals will be approached and screened (through a 5-minute interview) for eligibility to participate. Approximately 1,000 individuals are expected to be eligible and participate in the 40-minute behavioral assessment interview each year. At the end of the interview, the interviewer will train the respondent to recruit up to five peers. Each respondent who agrees to be a peer recruiter and who returns to the field site will be debriefed using a computer-assisted, interviewer-administered recruiter debriefing instrument. The debriefing instrument will collect information about the number of coupons the recruiter has distributed, whether anyone had refused the coupons, the race and ethnicity of those refusing coupons and the reason for refusal. This information is collected to improve response rates. Approximately 600 respondents are expected to participate as peer recruiters, about 500 of whom will return to be debriefed through a 2-minute interview. The total annualized burden is 776 hours. Participation of respondents is voluntary and there is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Persons Referred by Peer Recruiters	Screener	1,100	1	5/60
Eligible Transgender Persons	Behavioral assessment	1,000	1	40/60
Peer Recruiters	Recruiter Debriefing	500	1	2/60

Dated: August 19, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–21739 Filed 8–24–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-11–11HD]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Study of Comprehensive Cancer Control and Tobacco Control Program Partnerships—New—National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Tobacco use remains the leading preventable cause of death in the United States, causing over 443,000 deaths each year and resulting in an annual cost of more than $96 billion in direct medical expenses. Tobacco control is a top priority for two of CDC's programs. The first is the National Tobacco Control Program (NTCP), which is administered by the Office on Smoking and Health. The second is the National Comprehensive Cancer Control Program (NCCCP), which is administered by the Division of Cancer Prevention and Control. Both programs provide funding and technical support for public health programs in states, the District of Columbia, tribes/tribal organizations, and U.S. territories and Pacific Island jurisdictions.

CDC recognizes the need for increased collaboration between Comprehensive Cancer Control (CCC) programs and Tobacco Control Programs (TCP). Toward this end, CDC plans to conduct a study of current partnership efforts involving NCCCP awardees and NTCP awardees. Information will be collected to improve understanding of the ways in which CCCs and TCPs may collaborate to address cancer and tobacco control, and how these programs utilize their respective networks to cross-promote activities. The study will be conducted in seven states that: (1) Are funded through both the NCCCP and the NTCP, and (2) have an established relationship between the two programs.

Respondents for the Study of Comprehensive Cancer Control and Tobacco Control Program Partnerships will be state health department leaders, CCC and TCP staff (*e.g.,* program directors, evaluation specialists, media specialists, quitline coordinators), and other stakeholders, such as coalition members. Information will be collected through in-person interviews involving approximately 15 respondents in each state. Respondents will be asked about key aspects of their program's structure, activities, and collaborative efforts. Each interview will last approximately 45 minutes to one hour. CDC will provide each participating state with guidance and worksheets to prepare for site visits and key informant interviews.

OMB approval will be requested for one year. The information to be collected will be used to develop examples of successful strategies used by selected CCCs and TCPs to cross-collaborate and cross-promote programs/services, and to identify new areas of potential collaboration that may be shared with CDC, other Federal agencies, and other CCC and TCP states for replication. This study is one component of a larger, ARRA-funded effort to compare the effectiveness of traditional evidence-based tobacco cessation interventions to newer and innovative interventions used by CCC programs.

The total estimated annualized burden hours are 113. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Total number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Health Department Leadership	Interview Guide for Health Department Leadership.	7	1	45/60
CCC Programs	Site Visit Preparation	7	1	45/60
	Interview Guide for CCCs	49	1	1
Tobacco Control Programs	Site Visit Preparation	7	1	45/60
	Interview Guide for TCPs	49	1	1

Dated: August 19, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–21738 Filed 8–24–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics, (BSC, NCHS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:
11 a.m.–5:30 p.m., September 22, 2011.
8:30 a.m.–2 p.m., September 23, 2011.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-US citizens, pre-approval is required (please contact Althelia Harris, (301)458–4261, *adw1@cdc.gov* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international government. As required by the Federal Property Management Regulations, Title 41, Code of Federal Regulation, Subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters To Be Discussed: The agenda will include welcome remarks by the Director, NCHS; update on the Health Indicators Warehouse; update on program reviews; discussion of the NHANES program, plans for the NHIS for 2012 and beyond and an open session for comments from the public.

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by September 12, 2011.

The agenda items are subject to change as priorities dictate.

Contact Person for More Information: Virginia S. Cain, PhD, Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, Telephone (301) 458–4500, Fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Date: August 17, 2011.

Elizabeth Millington,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–21742 Filed 8–24–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5504–N]

Bundled Payments for Care Improvement Initiative: Request for Applications

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

ACTION: Notice.

SUMMARY: This notice announces a request for applications for organizations to participate in one or more of the initial four models under the Bundled Payments for Care Improvement initiative beginning in 2012.

DATES: *Letter of Intent Submission Deadlines:* Interested organizations must submit a nonbinding letter of intent by September 22, 2011 for Model 1 and November 4, 2011 for Models 2 through 4 as described on the CMS Innovation Center Web site *http://www.innovations.cms.gov/areas-of-focus/patient-care-models/bundled-payments-for-care-improvement.html.* For applicants wishing to receive historical Medicare claims data in preparation for Models 2 through 4, a separate research request packet and data use agreement must be filed in conjunction with the Letter of Intent.

Application Submission Deadlines: Applications must be received on or before October 21, 2011 for Model 1 and March 15, 2012 for Models 2 through 4.

ADDRESSES: Letter of Intents and Applications should be submitted electronically in searchable PDF format via encrypted e-mail to the following e-mail address by the date specified in the **DATES** section of this notice: *BundledPayments@cms.hhs.gov.* Applications and appendices will only be accepted via e-mail.

FOR FURTHER INFORMATION CONTACT: *BundledPayments@cms.hhs.gov* for questions regarding the application process of the Bundled Payments for Care Improvement initiative.

SUPPLEMENTARY INFORMATION:

I. Background

We are committed to achieving the three-part aim of better health, better health care, and reduced expenditures through continuous improvement for Medicare, Medicaid and Children's Health Insurance Program (CHIP) beneficiaries. Beneficiaries can experience improved health outcomes and patient experience when health care providers work in a coordinated and patient-centered manner. To this end, we are interested in partnering with providers who are working to redesign patient care to deliver these aims. Episode payment approaches that reward providers who take accountability for the three-part aim at the level of individual patient care for an episode are potential mechanisms for developing these partnerships.

In order to provide a flexible and far-reaching approach towards episode-based care improvement, we are seeking proposals from health care providers who wish to align incentives between hospitals, physicians, and nonphysician practitioners in order to better coordinate care throughout an episode of care. This Bundled Payment for Care Improvement initiative request for applications (RFA) will test episode-based payment for acute care and associated post-acute care, using both retrospective and prospective bundled payment methods. The RFA requests applications to test models centered around acute care; these models will inform the design of future models, including care improvement for chronic conditions. For more details, see the RFA which is available on the Innovation Center Web site at *http://www.innovations.cms.gov/areas-of-focus/patient-care-models/bundled-payments-for-care-improvement.html.*

II. Provisions of the Notice

Consistent with its authority under section 1115A of the Social Security Act (of the Act), as added by section 3021 of the Affordable Care Act, to test

innovative payment and service delivery models that reduce spending under Medicare, Medicaid, or CHIP, while preserving or enhancing the quality of care, the Innovation Center aims to achieve the following goals through implementation of the Bundled Payments for Care Improvement initiative:

- Improve care coordination, patient experience, and accountability in a patient centered manner.
- Support and encourage providers who are interested in continuously reengineering care to deliver better care, better health, at lower costs through continuous improvement.
- Create a virtuous cycle that leads to continually decreasing the cost of an acute or chronic episode of care while fostering quality improvement.
- Develop and test payment models that create extended accountability for better care, better health at lower costs for acute and chronic medical care.
- Shorten the cycle time for adoption of evidence-based care.
- Create environments that stimulate rapid development of new evidence-based knowledge.

The models to be tested based on applications to the RFA are as follows:

- *Model 1:* Retrospective payment models around the acute inpatient hospital stay only.
- *Model 2:* Retrospective bundled payment models for hospitals, physicians, and post-acute providers for an episode of care consisting of an inpatient hospital stay followed by post-acute care.
- *Model 3:* Retrospective bundled payment models for post-acute care where the episode does not include the acute inpatient hospital stay.
- *Model 4:* Prospectively administered bundled payment models for the acute inpatient hospital stay only, such as prospective bundled payment for hospitals and physicians for an inpatient hospital stay

Organizations are invited to submit proposals that define episodes of care in one or more of these four models. Proposals should demonstrate care improvement processes and enhancements such as reengineered care pathways using evidence-based medicine, standardized care using checklists, and care coordination. All models must encourage close partnerships among all of the providers caring for patients through the episode. Applicants must demonstrate robust quality monitoring and protocols to ensure beneficiary quality protection. Under all models, applicants must provide Medicare with a discount on Medicare fee-for-service expenditures.

Bundled Payments for Care Improvement agreements will include a performance period of 3 years, with the possibility of extending an additional 2 years, beginning with the respective program date. The program start date may be as early as the first quarter of CY 2012 for awardees in Model 1.

III. Collection of Information Requirements

Section 1115A(d) of the Act waives the requirements of the Paperwork Reduction Act of 1995 for the Innovation Center for purposes of testing new payment and service delivery models.

Authority: 44 U.S.C. 3101.

Dated: August 17, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–21707 Filed 8–23–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: National Child Traumatic Stress Initiative (NCTSI) Evaluation—(OMB No. 0930–0276)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS), will conduct the National Child Traumatic Stress Initiative (NCTSI) Evaluation. This evaluation serves multiple practical purposes: (1) To collect and analyze descriptive, outcome, and service experience information about the children and families served by the NCTSI centers; (2) to assess the NCTSI's impact on access to high-quality, trauma-informed care; (3) to evaluate NCTSI centers' training and consultation activity designed to promote evidence-based, trauma-informed services and the impact of such activity on child-serving systems; and (4) to assess the sustainability of the grant-funded activities to improve access to and quality of care for trauma-exposed children and their families beyond the grant period.

Data will be collected from caregivers and youth served by NCTSI centers, NCTSI and non-NCTSI administrators, NCTSI trainers, service providers trained by NCTSI centers and other training participants, administrators of mental health and non-mental health professionals from state and national child-serving organizations, and administrators of affiliate centers. Data collection will take place in all Community Treatment and Services Programs (CTS) and Treatment and Service Adaptation Centers (TSA) active during the three-year approval period. Currently, there are 45 CTS centers and 17 TSA centers active (*i.e.,* 62 active centers). After the first year, in September 2011, the 15 grantees funded in 2007 will reach the end of their data collection. At that point, additional centers may be funded or funded again. Because of this variability, the estimate of 62 centers is used to calculate burden.

The NCTSI Evaluation is composed of four distinct study components, each of which involves data collection, which are described below.

Descriptive and Clinical Outcomes

In order to describe the children served, their trauma histories and their clinical and functional outcomes, nine instruments will be used to collect data from children and adolescents who are receiving services in the NCTSI, and from caregivers of all children who are receiving NCTSI services. Data will be collected when the child/youth enters services and during subsequent follow-up sessions at three-month intervals over the course of one year. This study relies upon the use of data already being collected as a part of the Core Data Set, and includes the following instruments:

- The Core Clinical Characteristics Form, which collects demographic, psychosocial and clinical information about the child being served including information about the child's domestic environment and insurance status, indicators of the severity of the child's problems, behaviors and symptoms, and use of non-Network services;
- The Trauma Information/Detail Form, which collects information on the history of trauma(s) experienced by the child served by the NCTSI center including the type of trauma experienced, the age at which the trauma was experienced, type of exposure, whether or not the trauma is chronic, and the setting and

perpetrator(s) associated with the traumatic experience;

• The Child Behavior Checklist (CBCL) 1.5–5 and 6–18, which measure symptoms in such domains such as emotionally reactive, anxious/depressed, somatic complaints, withdrawn, attention problems, aggressive behavior, sleep problems, rule-breaking behavior, social problems, thought problems, and withdrawn/depressed;

• The UCLA PTSD Short Form, which screens for exposure to traumatic events and for all DSM–IV PTSD symptoms in children who report traumatic stress experiences; and the

• The Trauma Symptoms Checklist for Children, which evaluates acute and chronic posttraumatic stress symptoms in children's responses to unspecified traumatic events across several symptom domains.

• The Trauma Symptoms Checklist for Young Children (TSCYC), which is a 90-item caretaker-report instrument developed for the assessment of trauma-related symptoms in children ages 3 to 12.

• The Parenting Stress Index Short Form (PSI–SF), which yields a total stress score from three scales: Parental distress, parent-child dysfunctional interaction, and difficult child. The PSI–SF was developed from factor analysis of the PSI–Full-Length Version.

• The Children's Depression Inventory-2 Short (CDI–2S), which is a comprehensive multi-rater assessment of depressive symptoms in youth aged 7 to 17 years. Depressive symptomatology is quantified by the CDI 2 based on reports from children/adolescents, teachers and parents.

• The Global Appraisal of Individual Needs Modified Shore Screener (GAIN–MSS), which is designed primarily as a screener in general populations, ages 12 and older, to quickly and accurately identify clients who have 1 or more behavioral health disorders (e.g., internalizing or externalizing psychiatric disorders, substance use disorders, or crime/violence problems).

Approximately 6,000 youth and 9,700 caregivers will participate in the descriptive and clinical outcomes study over the clearance period.

Access to High Quality, Trauma-Informed Services

The NCTSI mission is to expand access to high quality, trauma-informed services for trauma-exposed children and adolescents and their families nationwide. This component of the evaluation is designed to assess NCTSI program progress in achieving this mission by collecting and analyzing data from a variety of sources addressing the question of whether access to high quality, trauma-informed services has improved and for which demographic groups. Instruments used as a part of this study component include:

• Evidence-based Practice (EBP) and Trauma-informed Systems Change Survey (ETSC), which assesses the extent to which NCTSI training and other dissemination activities have enhanced the knowledge base and use of trauma-informed services (TIS) within child-serving agencies, centers and organizations that are not a part of the NCTSI but rather have received training from the NCTSI as well as to assess the extent to which such services are evidence-based. The survey branches into two versions adapted for project directors/administrators and human service providers (e.g., mental health providers, child welfare case workers, teachers, primary care health care providers and others), allowing for questions tailored to the professional orientation and activities of each group. The ETSC survey will be used to assess the extent to which NCTSI training and dissemination activities have improved access to high quality, trauma-informed services for trauma-exposed children and their families that are served through such child-serving systems.

• The National Reach Survey, which assesses the extent to which the NCTSI has impacted the knowledge and awareness, policies, planning, programs, and practices related to trauma-informed care among state and national child-serving organizations external to the NCTSI centers.

• The Online Performance Monitoring Report (OPMR), which is primarily a mechanism for SAMHSA to monitor centers' progress towards achieving stated goals and a fulfillment of SAMHSA requirements for accountability and performance monitoring. In addition, this form will also serve as an important data source informing several components of the NCTSI evaluation.

Approximately 496 service providers and 186 administrators from NCTSI centers and organizations or agencies trained by NCTSI centers will participate in the ETSC survey. Approximately 4,000 individuals will be participating in the National Reach Survey, while approximately 62 individuals will participate in the OPMR.

Training, Evidence-Based Practices (EBPs), and Family/Consumer Partnerships

A major goal of the NCTSI is to enhance the capacity of administrators and service providers from agencies, centers and organizations associated with child-serving systems (including mental health, child welfare, juvenile justice, education and primary care) to use trauma-informed services (TIS) with trauma-exposed children and their families. NCTSI centers promote the use of TIS within child-serving systems to increase public awareness and knowledge about trauma exposure, trauma impact, and the range of trauma-informed assessments and services that are available. For this component, the ETSC Survey will be used to assess whether agencies, schools, and organizations that are a part of child-serving systems trained by the NCTSI have become more evidence-based and trauma-informed. Two additional forms will be used including:

• The Training Summary Form (TSF), which will be completed by trainers and will collect information on the number of participants trained, the type of training (including the trauma types addressed in the training), and the topics emphasized in the training.

• The Training Sign-In Sheet (TSIS), which will be completed by this participants of NCTSI-sponsored trainings. Participants will provide their names; agency, organization or center for which they work; their roles; and contact information including an email addresses. In addition, they will be asked to indicate whether the evaluation may contact them for participation.

Approximately 124 trainers will complete and submit the TSF, while approximately 12,400 trainees will complete the TSIS.

Sustainability

Assessing the sustainability of the progress made by the NCTSI and its partners is a key evaluation priority identified by stakeholders advising on the redesign of the NCTSI Evaluation. Therefore, while this issue was not addressed as part of the previous evaluation design, it has been included as a new area of importance for future NCTSI evaluation. This component of the evaluation focuses on understanding the degree to which NCTSI grant activities continue after funding has ended and the factors associated with the continuation of—or lapse in—grant activities such as the implementation of evidence-based practices or approaches to strengthen trauma-informed service provision. This component collects

sustainability data as part of the OPMR in the case of funded centers and, in the case of affiliate centers (centers that no longer receive SAMHSA funding but have continued involvement with the NCTSI and are defined by SAMHSA as affiliates), the following survey will be implemented:

- Sustainability Survey for Affiliate Centers, which assesses sustainability of NCTSI grant activities by collecting data on domains including grant history, funding sources and fiscal strategies, program mission, infrastructure, service delivery and continuation of practices and programs. Approximately 45 administrators of affiliate centers are expected to participate in this survey.

The revision to the currently approved information collection activities includes the extension of NCTSI Evaluation information collection activities for an additional three years. This revision also addresses the following programmatic changes:

- The number of centers for which burden was calculated is 62, which represents the number of currently active grantees (the number of centers at the time of the previous submission was 44).
- As a result of efforts to address updated evaluation priorities, reduce redundancy and consolidate multiple data collection efforts focused on national monitoring and evaluating of the NCTSI program, the request discontinues ten surveys, forms or interviews that are currently OMB-approved.
- In place of the ten surveys, forms or interviews that are currently OMB-approved that are being discontinued, and as part of the redesigned evaluation, three new data collection efforts will be implemented, including:
  - Online Performance Monitoring Report Form (OPMR)
  - Evidence-based Practice and Trauma-informed System Change Survey (ETSC)
  - Sustainability Survey for affiliate centers
- This request also enhances the existing Core Data Set by revising the Core Clinical Characteristics Forms and adding new instruments to address existing gaps in knowledge including:
  - Trauma Symptom Checklist for Young Children (TSCYC)
  - Parenting Stress Index Short Form (PSI–SF)
  - Children's Depression Inventory-2 Short (CDI–2S)
  - Global Appraisal of Needs Modified Short Screener (GAIN–MSS)
- A Training Sign-in Sheet (TSIS) has been developed for use at each training event sponsored by NCTSI centers. The purpose of the form is to collect brief information about NCTSI training participants.

The average annual respondent burden is estimated below.

Instrument	Number of respondents	Average number of responses per respondent	Hours per response	Total burden hours	3-year average of annual burden hours
Caregivers Served by NCTSI Centers					
Child Behavior Checklist 1.5–5/6–18 (CBCL 1.5–5/6–18) ..	[1] 9,729	[2] 4	0.33	12,842	4,281
Trauma Information/Detail Form	9,729	4	0.22	8,562	2,854
Core Clinical Characteristics Form	9,729	4	0.5	19,458	6,486
UCLA–PTSD Short Form (UCLA–PTSD)	[3] 7,394	4	0.17	5,028	1,676
Trauma Symptoms Checklist for Young Children (TSCYC)	[4] 2,724	4	0.33	3,596	1,199
Parenting Stress Index Short Form (PSI–SF)	[5] 2,919	4	0.08	934	311
Youth Served by NCTSI Centers Centers					
Trauma Symptoms Checklist for Children-Abbreviated (TSCC–A)	[6] 6,129	4	0.33	8,090	2,697
Children's Depression Inventory-2 Short (CDI–2S)	[7] 2,140	4	0.08	685	228
Global Appraisal of Individual Needs Modified Shore Screener (GAIN–MSS)	[8] 3,989	4	0.08	1,276	425
Funded NCTSI Center Project Directors of Other Administrators					
Online Performance Monitoring Report (OPMR)	62	12	0.60	446	149
Sustainability Survey for Currently—Funded Centers	62	3	0.28	52	17
NCTSI and Non-NCTSI Administrators					
Evidence-based Practice (EBP) and Trauma Informed Systems Change Survey (ETSC)—Administrator Version	[9] 186	2	0.30	112	37
NCTSI Trainers					
Training Summary Form	[10] 124	5	0.2	124	41
Service Providers Trained by NCTSI Centers					
Evidence-based Practice (EBP) and Trauma Informed Systems Change Survey (ETSC)—Provider Version	[11] 496	3	0.3	446	149
Training Participants					
Training Sign-In Sheet (TSIS)	[12] 12,400	1	.02	248	83

Instrument	Number of respondents	Average number of responses per respondent	Hours per response	Total burden hours	3-year average of annual burden hours
Mental Health and Non-Mental Health Professionals from State and National Child Serving Organizations					
NCTSI National Reach Survey	4,000	1	0.5	2,000	667
Affiliate Center Administrators					
Sustainability Survey— Affiliate Centers	45	3	.28	38	19
Total summary	71,857	66			63,957
Total annual summary	23,952	22			21,319

1. On average, 75 percent of centers participate in the Core Data Set (47 of 62 centers), with an average of 69 baseline visits per year.
2. On the basis of the children enrolled in the Core Data Set through September 30, 2010, the average length of time in treatment is 9 months, yielding an average of 4 assessments per child.
3. On the basis of the children enrolled in the Core Data Set through September 30, 2010, approximately 76% of the children in the Core Data Set will be ages 7 and older.
4. On the basis of the children enrolled in the Core Data Set through September 30, 2010, approximately 28% of the children in the Core Data Set will be between the ages of 3 and 7.
5. On the basis of the children enrolled in the Core Data Set through September 30, 2010, approximately 60% of the children in the Core Data Set will be aged 12 and under. We estimate that approximately 50% of centers will use this optional instrument, leading to an estimate of 30% of children in the Core Data Set.
6. On the basis of the children enrolled in the Core Data Set through September 30, 2010, approximately 63% of the children in the Core Data Set will be between the ages of 8 and 16.
7. On the basis of the children enrolled in the Core Data Set through September 30, 2010, approximately 44% of the children in the Core Data Set will between the ages of 7 and 18, and will have depression indicated as a potential problem at baseline. We estimate that approximately 50% of centers will use this optional instrument, leading to an estimate of 22% of children in the Core Data Set.
8. On the basis of the children enrolled in the Core Data Set through September 30, 2010, approximately 41% of the children in the Core Data Set will be aged 12 and older.
9. Respondents will be administrators from 62 currently funded NCTSI centers and administrators from two child serving systems that each NCTSI center trains.
10. Respondents will be center trainers or evaluation staff. On average, 5 Training Summary Forms may be completed by 124 trainers.
11. Respondents are NCTSI center employed clinicians and center trained providers. It is estimated that on average from the 62 centers, four center-employed clinicians and four center trained providers will take the survey three times.
12. It is expected that at least two trainers per center will provide five trainings and on an average there will be twenty participants per training.

Written comments and recommendations concerning the proposed information collection should be sent by September 26, 2011 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via e-mail to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via e-mail, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Dated: August 18, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–21713 Filed 8–24–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4009–DR; Docket ID FEMA–2011–0001]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–4009–DR), dated July 28, 2011, and related determinations.

DATES: *Effective Date:* July 28, 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: Notice is hereby given that, in a letter dated July 28, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms, flooding, and tornadoes during the period of July 1–11, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order

12148, as amended, Lawrence Sommers, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Minnesota have been designated as adversely affected by this major disaster:

Chisago, Isanti, Kandiyohi, Lincoln, Lyon, McLeod, Meeker, Mille Lacs, Pine, Pipestone, Redwood, Renville, Stearns, and Yellow Medicine Counties and the Mille Lacs Band of Ojibwe for Public Assistance.

All counties and Indian Tribes within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

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.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–21747 Filed 8–24–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4008–DR; Docket ID FEMA–2011–0001]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4008–DR), dated July 25, 2011, and related determinations.

DATES: *Effective Date:* July 25, 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: Notice is hereby given that, in a letter dated July 25, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, tornadoes, and flooding during the period of June 19–23, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven S. Ward, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this major disaster:

Bell, Breathitt, Knott, Knox, Lee, Magoffin, and Perry Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

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.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–21750 Filed 8–24–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4006–DR; Docket ID FEMA–2011–0001]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–4006–DR), dated July 22, 2011, and related determinations.

DATES: *Effective Date:* July 22, 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: Notice is hereby given that, in a letter dated July 22, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from severe storms and flooding during the period of May 26–30, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Coos and Grafton Counties for Public Assistance, including direct Federal assistance.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

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.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–21752 Filed 8–24–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4008–DR; Docket ID FEMA–2011–0001]

Kentucky; 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 Commonwealth of Kentucky (FEMA–4008–DR), dated July 25, 2011, and related determinations.

DATES: *Effective Date:* August 17, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Steven S. Ward as Federal Coordinating Officer for this disaster.

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.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–21754 Filed 8–24–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1976–DR; Docket ID FEMA–2011–0001]

Kentucky; Amendment No. 13 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 Commonwealth of Kentucky (FEMA–1976–DR), dated May 4, 2011, and related determinations.

DATES: *Effective Date:* August 17, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Steven S. Ward as Federal Coordinating Officer for this disaster.

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.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–21758 Filed 8–24–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1999–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 3 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 Texas (FEMA–1999–DR), dated July 1, 2011, and related determinations.

DATES: *Effective Date:* August 18, 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 Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 1, 2011.

Cochran, Hartley, Jeff Davis, and Palo Pinto Counties 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.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–21763 Filed 8–24–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–336; Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form N–336, Request for Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA); OMB Control No. 1615–0050.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 24, 2011.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., 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*. When submitting comments by e-mail please add the OMB Control Number 1615–0050 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–336; 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. Form N–336 provides a method for applicants, whose applications for naturalization are denied, to request a new hearing by an Immigration Officer of the same or higher rank as the denying officer, within 30 days of the original decision.

(5) *An estimate of the total number of annual respondents and the amount of time estimated for an average respondent to respond:* 5,523 responses at 2 hours and 45 minutes (2.75 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15,188 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., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: August 22, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–21735 Filed 8–24–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–508 and Form I–508F, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–508 and I–508F, Waiver of Rights, Privileges, Exemptions and Immunities.

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 June 2, 2011, at 76 FR 31972, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 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 Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Officer, 20 Massachusetts Avenue, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *uscisfrcomment@dhs.gov,* and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0025 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:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Waiver of Rights, Privileges, Exemptions and Immunities.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–508 and Form I–508F. 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.* This form is used by USCIS to determine eligibility of an applicant to retain the status of an alien lawfully admitted to the United States for permanent residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–508, 1,800 responses at .083 hours (5 minutes) per response, and Form 508F, 200 responses at .083 hours (5 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 166 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit: *http://www.regulations.gov/search/index.jsp*

If additional information is required contact: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, telephone (202) 272–8377.

Dated: August 22, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–21841 Filed 8–24–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2514–11; DHS Docket No. USCIS–2011–0014]

RIN 1615–ZB09

Filing Procedures for Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Liberians Provided Deferred Enforced Departure

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: On August 16, 2011, President Obama issued a memorandum to the Secretary of Homeland Security Janet Napolitano directing her to extend for an additional 18 months the deferred enforced departure (DED) of certain Liberians and to provide for work authorization during that period. The DED extension runs from September 30, 2011, through March 31, 2013. This notice provides instructions for eligible Liberians on how to apply for the full 18-month extension of employment authorization. Finally, this notice provides instructions for DED-eligible Liberians on how to apply for permission to travel outside the United States during the 18-month DED period.

USCIS will issue new employment authorization documents (EADs) with a March 31, 2013 expiration date to Liberians whose DED has been extended under the presidential memorandum and who apply for EADs under this extension. Given the timeframes involved with processing EAD applications, DHS recognizes that all DED-eligible Liberians may not receive new EADs until after their current EADs expire on September 30, 2011. Accordingly, this Notice automatically extends the validity of DED-related EADs that have an expiration date of September 30, 2011, for 6 months, through March 31, 2012, and explains how Liberians covered under DED and their employers may determine which EADs are automatically extended and their impact on Form I–9 and E-Verify processes.

DATES: This notice is effective October 1, 2011. The 6-month automatic extension of employment authorization for Liberians who are eligible for DED, including the extension of their EADs as specified in this notice, is effective on October 1, 2011. This automatic extension will expire on March 31, 2012. The 18-month extension of DED is valid through March 31, 2013.

FOR FURTHER INFORMATION CONTACT:

- For further information on DED, including guidance on the application process for EADs and additional information on eligibility, please visit the DED Web page at *http://www.uscis.gov/tps* and choose ''Deferred Enforced Departure'' from the menu on the left. You can find specific information about DED for Liberia by selecting ''DED Granted Country: Liberia'' from the menu on the left of the TPS or DED Web page. From the Liberian page, you can select the Liberian DED Questions & Answers from the menu on the right for further information.
- You can also contact the DED Operations Program Manager at the Status and Family Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this DED notice. It is not for individual case status inquiries.
- Applicants seeking information about the status of their individual cases can check Case Status Online available

at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

• Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Presidential Memorandum Extending DED for Certain Liberians

In accordance with his constitutional authority to conduct the foreign relations of the United States, President Obama has directed that Liberians (and eligible persons without nationality who last resided in Liberia) who are physically present in the United States and who held TPS on September 30, 2007, and are under a grant of DED through September 30, 2011, be provided DED for an additional 18-month period after their current DED status ends. *See* Memorandum from President Obama to the Secretary of Homeland Security dated August 16, 2011 (''Presidential Memorandum''). The President also directed the Secretary of Homeland Security (Secretary) to implement the necessary steps to authorize employment authorization for eligible Liberians for 18 months from October 1, 2011, through March 31, 2013.

Employment Authorization and Filing Requirements

How will I know if I am eligible for employment authorization under the Presidential Memorandum that extended DED for certain Liberians for 18 months?

The DED extension and the procedures for employment authorization in this notice apply to Liberian nationals (and persons without nationality who last habitually resided in Liberia) who:

• Are physically present in the United States;

• Have continuously resided in the United States since October 1, 2002;

• Held TPS on September 30, 2007; and

• Are under a grant of DED through September 30, 2011.

The above eligibility criteria are laid out in the Presidential Memorandum. This DED extension does not include any individual:

• Who would be ineligible for TPS for the reasons provided in section 244(c)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a(c)(2)(B);

• Whose removal the Secretary determines is in the interest of the United States;

• Whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;

• Who has voluntarily returned to Liberia or his or her country of last habitual residence outside the United States;

• Who was deported, excluded, or removed prior to August 16, 2011; or

• Who is subject to extradition.

What will I need to file if I am covered by DED and would like to have evidence of employment authorization?

If you are covered under DED for Liberia, and would like evidence of your employment authorization during the 18-month extension of DED, you must apply for an Employment Authorization Document (EAD) on Form I–765, Application for Employment Authorization. If you wish to have work authorization valid through March 31, 2013, you can file Form I–765 starting August 25, 2011. If you have a DED-related EAD that is valid through September 30, 2011, you must file Form I–765 as soon as possible to avoid gaps in work authorization. Please carefully follow the Form I–765 instructions when completing the application for an EAD. When filing the Form I–765, you must:

• Indicate that you are eligible for DED by putting ''(a)(11)'' in response to Question 16 on Form I–765;

• Include a copy of your last Form I–797, Notice of Action, showing that you were approved for TPS as of September 30, 2007, if such copy is available. Please note that evidence of TPS as of September 30, 2007, is necessary to show that you were covered under the previous DED for Liberia through September 30, 2011.; and

• Submit the Form I–765 application fee.

The Form I-765 application fee is required for individuals covered under DED who request an EAD based on the fee rule change of September 24, 2010. *See* 75 FR 58962; *see also* 8 CFR 103.7(b)(HH) (states that there is a fee for Form I–765 and what that fee is), 274a.13(a) (states that an alien authorized to be employed under section 274a.12(a)(11) must file a Form I–765), and 274a.12(a)(12) (which is the employment authorization classification for those covered under Temporary Protected Status and, by extension, deferred enforced departure). If you are unable to pay, you may apply for an application fee waiver by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation

How will I know if I will need to obtain biometrics?

If biometrics are required to produce the secure EAD, you will be notified by USCIS and scheduled for an appointment at a USCIS Application Support Center.

Where do I submit my completed Form I–765?

Please submit your completed Form I–765 and supporting documentation to: USCIS, Attn: DED Liberia, P.O. Box 8677, Chicago, IL 60680–8677.

Can I file my Form I–765 electronically?

No. Electronic filing is not available for filing Form I–765 based on DED.

Extension of Employment Authorization and EADs

May I request an interim EAD at my local office?

No. Local USCIS offices will not issue interim EADs to individuals eligible for DED under the Presidential Memorandum.

Am I eligible to receive an automatic 6-month extension of my current EAD from September 30 through March 31, 2012?

You are eligible for an automatic 6-month extension of your EAD if you are a national of Liberia (or person having no nationality who last habitually resided in Liberia), and you are currently covered by DED through September 30, 2011.

This automatic extension covers EADs issued on Form I–766, Employment Authorization Document, bearing an expiration date of September 30, 2011. These EADs must also bear the notation ''A–11'' on the face of the card under ''Category.''

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing employment eligibility verification, Form I–9?

You can find a list of acceptable document choices on page 5 of the Employment Eligibility Verification, Form I–9. Employers are required to verify the identity and employment authorization of all new employees by using Form I–9. Within three days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting

identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under List A.

If you received a 6-month automatic extension of your EAD by virtue of this **Federal Register** notice, you may choose to present your automatically extended EAD, as described above, to your employer as proof of identity and employment authorization for Form I–9 through March 31, 2012 (see the subsection below titled ''*How do my employer and I complete Form I–9 (i.e., verification) using an automatically extended EAD for a new job?*'' for further information). To minimize confusion over this extension at the time of hire, you may also show a copy of this **Federal Register** notice regarding the automatic extension of employment authorization through March 31, 2012, to your employer. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or List B plus List C.

What documentation may I show my employer if I am already employed but my current DED–related EAD is set to expire?

You must present any document from List A or any document from List C on Form I–9 to reverify employment authorization. Employers are required to reverify on Form I–9 the employment authorization of current employees upon the expiration of a DED-related EAD.

If you received a 6-month automatic extension of your EAD by virtue of this **Federal Register** notice, your employer does not need to reverify until after March 31, 2012. However, you and your employer do need to make corrections to the employment authorization expiration dates in Section 1 and Section 2 of the Form I–9 (see the subsection below titled ''*What corrections should my employer at my current job and I make to Form I–9 if my EAD has been automatically extended?*'' for further information). In addition, you may also show this **Federal Register** notice to your employer to avoid confusion about whether or not your expired TPS-related document is acceptable. After March 31, 2012, when the automatic extension expires, your employer must reverify your employment authorization. You may show any document from List A or List C on Form I–9 to satisfy this reverification requirement.

What happens after March 31, 2012, for purposes of employment authorization?

After March 31, 2012, employers may not accept the EADs that were automatically extended by this **Federal Register** notice. However, USCIS will issue new EADs to individuals covered under DED. These EADs will have an expiration date of March 31, 2013, and can be presented to your employer as proof of employment authorization and identity. The EAD will bear the notation ''A–11'' on the face of the card under ''Category.'' Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Form I–9 to prove identity and employment authorization.

How do my employer and I complete Form I–9 (i.e., verification) using an automatically extended EAD for a new job?

When using an automatically extended EAD to fill out Form I–9 for a new job prior to March 31, 2012, you and your employer should do the following:

(1) For Section 1, you should:

a. Check ''An alien authorized to work;''

b. Write your alien number (A-number) in the first space (your EAD or other document from DHS will have your A-number printed on it); and

c. Write the automatic extension date in the second space.

(2) For Section 2, employers should:

a. Record the document title;

b. Record the document number; and

c. Record the automatically extended EAD expiration date.

After March 31, 2012, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What corrections should my employer at my current job and I make to Form I–9 if my EAD has been automatically extended?

If you are an existing employee who presented a DED-related EAD that was valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Form I–9 as follows:

(1) For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write March 31, 2012, above the previous date;

c. Write ''DED Ext.'' in the margin of Section 1; and

a. Initial and date the correction in the margin of Section 1.

(2) For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write March 31, 2012, above the previous date;

c. Write ''DED Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

After March 31, 2012, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

If you are an employer who participates in E-Verify, you will receive a ''Work Authorization Documents Expiring'' case alert when an individual covered under DED has an EAD that is about to expire. Usually, this message is an alert to complete Section 3 of Form I–9 to reverify an employee's employment authorization. For existing employees with DED-related EADs that have been automatically extended, employers should disregard the E-Verify case alert and follow the instructions above explaining how to correct Form I–9. After March 31, 2012, employment authorization needs to be reverified in Section 3. You should never use E-Verify for reverification.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Liberian citizenship?

No. When completing the Form I–9, employers must accept any documentation that appears on the lists of acceptable documentation, and that reasonably appears to be genuine and that relates to you. Employers may not request documentation that does not appear on the Form I–9. Therefore, employers may not request proof of Liberian citizenship when completing Form I–9. If presented with EADs that have been automatically extended pursuant to this **Federal Register** notice or EADs that are unexpired on their face, employers must accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. See below for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you because of your citizenship or immigration status, or national origin.

Note to All Employers

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. The USCIS Customer Assistance Office accepts calls in English and Spanish only. Employers may also call the Department of Justice (DOJ) Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155.

Note to Employees

Employees or applicants may call the DOJ OSC Worker Information Hotline at 1–800–255–7688 for information regarding employment discrimination based upon citizenship or immigration status, and national origin, unfair documentary practices related to the Form I–9, and discriminatory practices related E-Verify. Employers must accept any document or combination of documents acceptable for Form I–9 completion if the documentation reasonably appears to be genuine and to relate to the employee. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employees who receive an initial mismatch via E-Verify must be given an opportunity to challenge the mismatch, and employers are prohibited from taking adverse action against such employees based on the initial mismatch unless and until E-Verify returns a final non-confirmation. The Hotline accepts calls in multiple languages. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/osc/.*

Note Regarding Federal, State and Local Government Agencies (Such as Departments of Motor Vehicles)

State and local government agencies are permitted to create their own guidelines when granting certain benefits, such as a driver's license or an identification card. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. If you are applying for a state or local government benefit, you may need to provide the state or local government agency with documents that show you are covered under DED and show you are authorized to work based on DED. Examples of documents state or local government agencies may require are:

(1) Your expired EAD that has been automatically extended, or your EAD that has a valid expiration date;

(2) A copy of this **Federal Register** notice if your EAD is automatically extended under this notice;

(3) A copy of your past Form I–821 Approval Notice (Form I–797), if you receive one from USCIS; and

(4) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS DED Web page that provides information on the automatic extension.

Check with the state or local agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response following completion of all required SAVE verification steps, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has completed all SAVE verification and you do not believe the response is correct, you may make an Info Pass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found by going to the SAVE Web site at *http://www.uscis.gov/save,* and then choosing ''How to Correct Your Records'' from the menu on the right.

Travel Authorization and Advance Parole

Individuals covered under DED who want to travel outside of the United States must apply for and receive advance parole by filing Form I–131, Application for Travel Document, with required fees before departing the United States. *See* 8 CFR 223.2(a). The determination whether to grant advance parole is within the discretion of the Department of Homeland Security and is not guaranteed in all cases. If you seek advance parole in order to go to Liberia or to your country of last habitual residence before the United States, you may risk being found ineligible to re-enter the United States under DED because the Presidential Memorandum excludes persons ''who have voluntarily returned to Liberia or his or her country of last habitual residence outside of the United States.''

You may submit your completed Form I–131 with your Form I–765. If you choose to file a Form I–131 separately, please submit the application along with supporting documentation that you qualify for DED to: USCIS, Attn: DED Liberia, P.O. Box 8677, Chicago, IL 60680–8677.

If you have a pending or approved I–765, please submit the I–797 notice of receipt or approval along with your Form I–131 and supporting documentation.

Dated: August 22, 2011.

Lori Scialabba,

Deputy Director, U.S. Citzenship and Immigration Services.

[FR Doc. 2011–21842 Filed 8–24–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5511–N–05]

Credit Watch Termination Initiative; Termination of Direct Endorsement (DE) Approval

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Direct Endorsement (DE) Approval taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their DE Approval terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 HUD published a notice (64 FR 26769), on its procedures for terminating Origination Approval Agreements with FHA lenders and

placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Approval Agreements terminated. On January 21, 2010 HUD issued Mortgagee Letter 2010–03 which advised the extended procedures for terminating Underwriting Authority of Direct Endorsement mortgagees.

Termination of Direct Endorsement Approval: Approval of a DE mortgagee by HUD/FHA authorizes the mortgagee to underwrite single family mortgage loans and submit them to FHA for insurance endorsement. The Approval may be terminated on the basis of poor performance of FHA-insured mortgage loans underwritten by the mortgagee. The termination of a mortgagee's DE Approval is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the DE Approval with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the quarterly review period ending March 31, 2011, HUD is terminating the DE Approval of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the DE Approval precludes the mortgagee from underwriting FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA-insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are those already underwritten and approved by a DE underwriter, and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated mortgagee; however, the cases may be transferred for completion of processing and underwriting to another mortgagee with DE Approval in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement of the DE Approval if the DE Approval for the affected area or areas has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.10 and 202.12. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their DE Approvals terminated by HUD:

Mortgagee name	Mortgagee home office address	HUD office jurisdictions	Termination effective date	Homeownership centers
AmericaHomeKey, Inc	3838 Oak Lawn Ave., Ste 1050 Dallas, TX 75219.	Greensboro	7/18/11	Atlanta.
Sydion Financial LLC	5329 Park Rd., East Lake Tapps, WA 98391.	Seattle	7/18/11	Santa Ana.

Dated: August 9, 2011.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–21720 Filed 8–24–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2011–N148; 91300–1234–0000]

North American Waterfowl Management Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and public comment.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the draft North American Waterfowl Management Plan Revision (draft Plan Revision) for public review. We request review and comment on the draft Plan Revision from local, State, and Federal agencies; nongovernment conservation organizations; and the public. The draft Plan Revision, which was developed in close consultation with the waterfowl management community, provides a framework for waterfowl management in the 21st century.

DATES: To ensure that we are able to consider your comments, please submit them on or before September 26, 2011.

ADDRESSES: If you wish to review the draft Plan Revision, you may obtain a copy on our Web site at *http://www.nawmprevision.org.*

You may submit comments on the draft Plan Revision through the *http://www.nawmprevision.org* Web site, via e-mail to *info@nawmprevision.org,* or by U.S. Mail to the U.S. Fish and Wildlife Service–Division of Bird Habitat Conservation, Attn: Draft NAWMP Revision, 4401 North Fairfax Drive MS4075, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Michael J. Johnson at the above address, at 703–358–1784, or at *mike_j_johnson@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The North American Waterfowl Management Plan (NAWMP or Plan), first signed in 1986, has remained a leading model for other international conservation plans. In large measure, this is because it is a living and evolving

document that is updated periodically with engagement of the broad waterfowl conservation community. This important work is under way again, with a target date of mid-2012 for completion.

The Plan Committee formed the NAWMP Revision Steering Committee (RSC) to serve as a focal point for gathering, vetting, and synthesizing ideas from the waterfowl management community and to advise the Plan Committee on the content of the Plan Revision.

At its August 2009 meeting, the Plan Committee agreed to engage stakeholders in generating initial fundamental goals for the Plan Revision using a facilitated process to ensure consistency in approach.

Plan Revision Development

To achieve broad consensus, the Plan Committee used an iterative, highly transparent, and well documented process that included waterfowl conservation stakeholders.

The process began with two rounds of workshops in Canada and the United States aimed at eliciting goals and objectives for waterfowl management and identifying broad-scale alternative strategies for achieving objectives.

During 6 Round One workshops, participants identified 3 fundamental objectives for waterfowl management from a list of 31 candidate objectives. During Round Two, participants clarified the meaning of the fundamental objectives identified in Round One.

A total of 266 people participated in 13 Round One and Round Two workshops in the United States and Canada. Several people submitted input via the *http://www.nawmprevision.org* website. The RSC synthesized Round One and Round Two workshop results and website feedback, and a writing team prepared the draft Plan Revision document.

Request for Public Comments

We invite written comments on the draft Plan Revision. We will consider all comments we receive by the date specified in **DATES**. Methods of submitting comments are in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive will be available, by appointment, for public inspection during normal business hours at our office (see **ADDRESSES**).

Authority: Fish and Wildlife Coordination Act (16 U.S.C. 661–667e)

Dated: July 26, 2011.

James J. Slack,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–21719 Filed 8–24–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8103–05; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Doyon, Limited The decision approves conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq*). The lands are in the vicinity of Anvik, Alaska, and are located in:

Seward Meridian, Alaska

T. 29 N., R. 59 W.,
Sec. 36.

Containing 597.36 acres.

Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 26, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Linda L. Keskitalo,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–21764 Filed 8–24–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–10169, AA–10170; LLAK–965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Calista Corporation. The decision will approve the conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The lands are located south west of Mountain Village, Alaska, and contain 9.04 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not

certified, return receipt requested, shall have until September 26, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov*. Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.

[FR Doc. 2011–21769 Filed 8–24–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14924–A; LLAK965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to The Kuskokwim Corporation, Successor in Interest to Red Devil Incorporated. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation. The lands are in the vicinity of Red Devil, Alaska, and are located in:

Seward Meridian, Alaska

T. 22 N., R. 44 W.,
Secs. 27 to 34, inclusive.
Containing 5,014.64 acres.

Notice of the decision will also be published four times in the *Anchorage Daily News*.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 26, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov*. Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Barbara Opp Waldal,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–21772 Filed 8–24–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–11; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Doyon, Limited. The decision approves conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The lands are in the vicinity of Hughes, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 7 N., R. 21 E.,
Secs. 24 and 25.
Containing 1,280.00 acres.
T. 6 N., R. 22 E.,
Secs. 7, 18, and 19;
Secs. 30 and 31.
Containing 2,975.58 acres.
T. 9 N., R. 23 E.,
Sec. 4.
Containing 637.76 acres
Aggregating 4,893.34 acres.

Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 26, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222

West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

John Leaf,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–21774 Filed 8–24–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON03000–L14300000–FR0000; COC–73780]

Notice of Realty Action; Recreation and Public Purposes Act Classification and Conveyance of Public Land in Mesa County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) Grand Junction Field Office examined approximately 80 acres of public land in Mesa County, Colorado and found the land suitable for classification for sale under the provisions of the Recreation and Public Purposes Act (R&PP). Colorado Mesa University (formerly Mesa State College) proposes to use the land for construction and operation of a Peace Officer Standards and Training (POST) Academy and Mesa County Regional Public Safety Training Facility (RPSTF).

DATES: Interested parties may submit written comments regarding the proposed sale or classification on or before October 11, 2011. Any adverse comments will be reviewed by the BLM Colorado State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become final on October 24, 2011. The land will not be offered for sale until the classification becomes effective.

ADDRESSES: Comments should be sent to the BLM, Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado 81506, ATTN: Robin Lacy. Information concerning the proposed land sale, including reservations, planning documents and mineral report is available for review at the Grand Junction Field Office. Normal business hours are 7:45 am to 4:30 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robin Lacy, Realty Specialist, at (970) 244–3028, at the above address or by e-mail at: *rlacy@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: The BLM examined and found the following public lands in Mesa County, Colorado, suitable for classification for sale to Colorado Mesa University (formerly Mesa State College) under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*), the Taylor Grazing Act (43 U.S.C. 315(f)) (classification) and Executive Order No. 6910:

Ute Principal Meridian, Colorado,

T. 2 S., R. 1 E.
Section 2: lots 5 and 8,
N½NW¼SE¼NE¼,
N½NE¼SW¼NE¼.

The area described contains 78.7 acres in Mesa County.

The land is withdrawn for U.S. Department of the Interior, Bureau of Reclamation (BOR) purposes; however, under the provisions of 43 CFR 2741.5(g), lands under the jurisdiction of another agency can be conveyed for R&PP purposes with that agency's approval. The BOR issued a memorandum dated April 21, 2009, stating that it has no objection to the proposed R&PP conveyance because the subject lands are no longer necessary for reclamation purposes. The sale is consistent with the BLM Grand Junction Record of Decision and Approved Resource Management Plan dated January 1987, as amended, and would be in the public interest.

In accordance with the R&PP Act, Colorado Mesa University (Formerly Mesa State College) filed an R&PP application to develop the above described land as a POST Academy and RPSTF to include the following facilities: target shooting range, driving training track, off-road vehicle training course, obstacle course and classrooms. The patent, if issued, will be subject to the following reservations, terms and conditions:

1. A reservation of a right-of-way thereon for ditches or canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Provisions of the R&PP Act and all applicable regulations.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals under applicable laws, along with all necessary access and exit rights.

4. Any valid rights-of-way that may exist at the time of sale.

5. The patent would contain the following indemnification statement:

Colorado Mesa University, its successors or assigns, shall defend, indemnify, and hold harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring or attributable directly or indirectly to, the disposal of solid waste on, or the release of hazardous substances from Ute Principal Meridian, Colorado, T. 2 S., R. 1 E., Section 2: Lots 5 and 8, N½NW¼SE¼NE¼, N½NE¼SW¼NE¼, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States. In the event of payment, loss, or expense under this agreement, the patentee shall be subrogated to the extent of the amount of such payment to all rights, powers, privileges, and remedies of the United States against any person regarding such payment, loss, or expense.

6. A patent would specify that no portion of the land conveyed shall under any circumstances revert to the United States if such portion has been used for solid waste disposal or for any other purpose that the Secretary finds may result in the disposal, placement or release of any hazardous substance.

7. The patentee would be required to comply with all Federal and state laws applicable to the disposal, placement or release of hazardous substances (hazardous substance as defined in 40 CFR part 302).

8. A patent would contain the following indemnification statement under the Comprehensive Environmental Response Compensation and Liability Act:

Pursuant to the requirements established by Section 120(h) of the Comprehensive

Environmental Response Compensation and Liability Act (42 U.S.C. 9620), as amended by the Superfund Amendments And Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the above described parcel has been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

A limited reversionary provision would state that the title shall revert to the United States upon a finding that the patentee has not substantially developed the land in accordance with the approved plan of development within 5 years from the date of sale finding (after notice and opportunity for a hearing). No portion of the land conveyed will, under any circumstances, revert to the United States if such portion has been used for solid waste disposal or any other purpose that may result in the disposal, placement or release of any hazardous substance.

Upon publication of this notice in the **Federal Register**, the lands described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the application, or 18 months from the date of this notice, whichever occurs first.

Classification Comments: Interested parties may submit comments involving the suitability of the land for use as a POST Academy and PRSTF. Comments on the classification are restricted to whether the land is physically suitable for the proposed use, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not related to the suitability of the land for the proposed use. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Only written comments submitted by postal service or overnight mail to the BLM Grand Junction Field Office will be considered properly filed. E-mail, fax, or telephone comments will not be considered properly filed. Documents related to this action are on file in the BLM Grand Junction Field Office at the address above and may be reviewed by the public at their request.

Authority: 43 CFR 2741.5.

Anna Marie Burden,

Acting State Director.

[FR Doc. 2011–21759 Filed 8–24–11; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain LED Photographic Lighting Devices and Components Thereof,* DN 2838; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Litepanels, Ltd., and Litepanels, Inc. on August 03, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain LED photographic lighting devices and components thereof. The complaint names as respondents Flolight, LLC of CA; Prompter People, Inc. of CA; IKAN Corporation of TX; Advanced Business Computer Services, LLC, d/b/a Cool Lights USA of NV; Elation Lighting, Inc. of CA; Fotodiox Inc. of IL; Fuzhou F&V Photographic Equipment Co., Ltd. of China; Yuyao Lishuai Photo-Facility Co., Ltd. of China; Yuyao Fotodiox Photo Equipment Co. Ltd. of China; Shantou Nanguang Photographic Equipment Co., Ltd. of China; Visio Light, Inc. of Taiwan; Tianjin Wuqing Huanyu Film and TV Equipment Factory of China; Stellar Lighting Systems of CA; and Yuyao Lily Collection Co., Ltd. of China.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the

public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2838'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: August 3, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–21740 Filed 8–24–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–718]

In the Matter of Certain Electronic Paper Towel Dispensing Devices and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion for Summary Determination of Violation of Section 337 by Defaulting Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 36) of the presiding administrative law judge (''ALJ'') granting complainant's motion for summary determination of violation of Section 337 by defaulting respondents in Inv. No. 337–TA–718, *Certain Electronic Paper Towel Dispensing Devices and Components Thereof.*

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 21, 2010, based on a complaint filed by Georgia-Pacific Consumer Products LP (''Georgia-Pacific'') of Atlanta, Georgia. 75 FR 28651 (May 21, 2010). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic paper towel dispensing devices and components thereof by reason of infringement of various claims of United States Patent Nos. 6,871,815; 7,017,856; 7,182,289; and 7,387,274. The complaint, as amended, named as respondents Kruger Products LP of Mississauga, Ontario, Canada; KTG USA LP of Memphis, Tennessee; Stefco Industries, Inc. and Cellynne Corporation (collectively, ''Stefco''), both of Haines City, Florida; Draco Hygienic Products Inc. of Ontario, California; NetPak Electronic Plastic and Cosmetic, Inc. of Chicago, Illinois; NetPak Electronik Plastik ve Kozmetik Sanayi, Ve Ticaret Ltd. of Izmir, Turkey (''NetPak''); Paradigm Marketing Consortium, Inc. and United Sourcing Network Corp., both of Syosset, New York; New Choice (H.K.) Ltd. of Shatin, Hong Kong; Vida International Inc. of Taipei, Taiwan; Jet Power International Limited, of Guangdong, China; WINCO Industries Co. and DWL International Trading Inc., both of Lodi, New Jersey; Franklin Financial Management, Inc. d/b/a Update International of Los Angeles, California; Alliance in Manufacturing LLC of St. Louis, Missouri; Ko-Am Corporation Inc. d/b/a Janitor's World of Dallas, Texas; and Natury S.A. de C.V. of Veracruz, Mexico. Except for Stefco and NetPak, all other respondents have been terminated based on consent orders.

On December 30, 2010, the ALJ issued an initial determination finding Stefco and NetPak in default. On February 9, 2011, Georgia-Pacific filed a motion pursuant to Commission Rule 210.18 (19 CFR 210.18) for a summary determination of violation of Section 337 by Stefco and NetPak. Georgia-Pacific requested that the ALJ recommend issuance of a general exclusion order and a cease and desist order against the defaulting respondents. On February 22, 2011, the Commission investigative attorney filed a response supporting the motion.

On July 12, 2011, the ALJ issued the subject ID granting Georgia-Pacific's motion for summary determination and his recommended determination on the issues of remedy and bonding. No petitions for review were filed.

Having examined the record of this investigation, including the ALJ=s final ID, the Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from

engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Tuesday, September 6, 2011. Reply submissions must be filed no later than the close of business on Tuesday, September 13, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: August 19, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–21705 Filed 8–24–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 17, 2011, a proposed Consent Decree in *United States* v. *Hammond Group, Inc.,* Civil Action No. 2:11–cv–00298–JD–PRC, was filed with the United States District Court for Northern District of Indiana, Hammond Division.

In this action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607–9675, as amended (''CERCLA''), the United States seeks recovery of costs it incurred in connection to the release or threatened release of hazardous substances into the environment at the Columbia Avenue Spill Site in Hammond, Indiana, as well as a declaratory judgment that the Defendant is liable for any future costs related to the Site. Under the terms of the proposed Consent Decree, the Defendant will pay in eight quarterly installments the sum of $1,389,569.88, which represents all costs incurred by EPA in connection with the Site, and interest. In return, the Defendant will receive covenants not to sue under Sections 107(a) and 106 of CERCLA, 42 U.S.C. 9607(a) and 9606.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to either: *United States* v. *Hammond Group, Inc.,* Civil Action No. 2:11–cv–00298–JD–PRC, or D.J. Ref. 90–11–3–10080. The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, 5400 Federal Plaza, Suite 1500, Hammond, Indiana 46320. During the public comment period, the Consent Decree may also be examined at the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree library, please enclose a check, payable to the U.S. Treasury, in the amount of $21.50 (25 cents per page reproduction cost), or, if by e-mail or fax, forward a check in the applicable amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–21703 Filed 8–24–11; 8:45 am]

BILLING CODE 4410–15–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0383]

Agency Information Collection Activities: Submission for the Office of Management and Budget Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Office of Management and Budget review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 16, 2011.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Title 10 of the Code of Federal Regulations (10 CFR) Part 73—''Physical Protection of Plants and Materials.''

3. *Current OMB approval number:* 3150–0002.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* On occasion, with the exception of the initial submittal of revised Cyber Security Plans, Security Plans, Safeguards Contingency Plans, and Security Training and Qualification Plans. Required reports are submitted and evaluated as events occur.

6. *Who will be required or asked to report:* Nuclear power reactor licensees, licensed under 10 CFR part 50 or 52 who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material; Category I fuel facilities; Category II and III facilities; nonpower reactors (research and test reactors); and 262 other nuclear materials licensees.

7. *An estimate of the number of annual responses:* 151,884 (30,178 reporting responses + 121,127 third party responses + 579 recordkeepers).

8. *The estimated number of annual respondents:* 579.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 555,346 hours (20,510 hours reporting + 500,524 hours recordkeeping + 34,312 hours third party disclosure).

10. *Abstract:* The NRC regulations in 10 CFR part 73 prescribe requirements to establish and maintain a physical protection system and security organization with capabilities for protection of (1) Special nuclear material (SNM) at fixed sites, (2) SNM in transit, and (3) plants in which SNM is used. The objective is to ensure that activities involving special nuclear material are consistent with interests of common defense and security and that these activities do not constitute an unreasonable risk to public health and safety. The information in the reports and records submitted by licensees is used by the NRC staff to ensure that the health and safety of the public and the environment are protected, and licensee possession and use of special nuclear material is in compliance with license and regulatory requirements.

The public may examine and have copied, for a fee, publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available on the NRC Web site at *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC Web site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 26, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0002), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to CWhiteman@omb.eop.gov or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this 19th day of August, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–21714 Filed 8–24–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Request To Change Federal Employees Health Benefits (FEHB) Enrollment for Spouse Equity/Temporary Continuation of Coverage (TCC) Enrollees/Direct Pay Annuitants (DPRS 2809)

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0202, Request to Change Federal Employees Health Benefits (FEHB) Enrollment for Spouse Equity/Temporary Continuation of Coverage (TCC) Enrollees/Direct Pay Annuitants. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on April 11, 2011 at Volume 76 FR 18810 allowing for a 60-day public comment period. We received comments from one organization. Based on those comments, several changes have been made to this information collection that makes it consistent with the Affordable Care Act (Pub. L. 111–48). The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until September 26, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., 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.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting 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: The Request to Change Federal Employees Health Benefits (FEHB) Enrollment for Spouse Equity/Temporary Continuation of Coverage (TCC) Enrollees/Direct Pay Annuitants is used by former spouses currently enrolled under the Spouse Equity provision of law, TCC enrollees, and Direct Pay Annuitants to change their FEHB enrollment during open season.

Analysis

Agency: Federal Employee Insurance Operations, Healthcare and Insurance, Office of Personnel Management

Title: Request to Change Federal Employees Health Benefits (FEHB) Enrollment for Spouse Equity/ Temporary Continuation of Coverage (TCC) Enrollees/Direct Pay Annuitants.

OMB Number: 3206–0202.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 27,000.

Estimated Time per Respondent: 45 minutes.

Total Burden Hours: 20,250.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–21783 Filed 8–24–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Roland Edwards, Senior Executive Resource Services, Executive Resources and Employee Development, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between June 1, 2011, and June 30, 2011. These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr/.* A consolidated listing of all authorities as of June 30 is also published each year. The following Schedules are not codified in the Code of Federal Regulations. These are agency-specific exceptions.

Schedule A

No Schedule A authorities to report during June 2011.

Schedule B

No Schedule B authorities to report during June 2011.

Schedule C

The following Schedule C appointments were approved during June 2011.

Agency name	Organization name	Position title	Authorization No.	Effective date
BROADCASTING BOARD OF GOVERNORS.	International Broadcasting Bureau	Confidential Assistant	IB110005	6/22/2011
DEPARTMENT OF COMMERCE ..	Office of Scheduling and Advance	Confidential Assistant	DC110089	6/3/2011
	Office of the Assistant Secretary for Manufacturing and Services.	Special Assistant	DC110088	6/8/2011
	Economic Development Administration.	Special Advisor	DC110090	6/10/2011
	Office of Policy and Strategic Planning.	Special Assistant	DC110086	6/16/2011
	Office of the General Counsel	Special Assistant	DC110092	6/16/2011
	Office of the Under Secretary	Special Advisor	DC110093	6/17/2011
	Office of the Assistant Secretary for Economic Development.	Chief of Staff for Economic Development.	DC110094	6/17/2011
COMMISSION ON CIVIL RIGHTS	Commissioners	Special Assistant	CC110002	6/22/2011
COMMODITY FUTURES TRADING COMMISSION.	Office of the Chairperson	Director, Office of Public Affairs	CT110002	6/3/2011
	Office of the Chairperson	Public Affairs Specialist (Speechwriter).	CT110003	6/28/2011
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Special Assistant (Communications).	EQ110005	6/13/2011
DEPARTMENT OF DEFENSE	Office of the General Counsel	Special Counsel	DD110073	6/3/2011
	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD110076	6/3/2011
	Office of the Under Secretary of Defense (Comptroller).	Special Assistant	DD110078	6/17/2011
DEPARTMENT OF EDUCATION ..	Office of the General Counsel	Special Assistant	DB110088	6/3/2011
	Office of the Under Secretary	Director of the White House Initiative on Historically Black Colleges and Universities.	DB110085	6/10/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Under Secretary	Director, White House Initiative on Educational Excellence for Hispanic Americans.	DB110086	6/10/2011
	Office of the Under Secretary	Director, Faith-Based & Neighborhood Partnerships.	DB110087	6/10/2011
	Office of the Under Secretary	Special Assistant	DB110084	6/10/2011
	Office of the Under Secretary	Director, White House Initiative on Educational Excellence for Hispanic Americans.	DB110083	6/10/2011
	Office of the Under Secretary	Special Assistant	DB110082	6/10/2011
	Office of the Under Secretary	Confidential Assistant	DB110090	6/10/2011
	Office of the Under Secretary	Special Assistant	DB110089	6/10/2011
	Office of the Under Secretary	Confidential Assistant	DB110092	6/17/2011
	Office of Vocational and Adult Education.	Deputy Assistant Secretary for Policy & Strategic Initiatives.	DB110091	6/21/2011
DEPARTMENT OF ENERGY	Office of Public Affairs Assistant Secretary for Energy Efficiency and Renewable Energy.	Press Assistant	DE110092	6/3/2011
		Special Assistant	DE110107	6/15/2011
	Office of the Deputy Secretary	Special Assistant	DE110108	6/15/2011
	Office of General Counsel	Staff Assistant	DE110112	6/21/2011
	National Nuclear Security Administration.	Senior Advisor	DE110115	6/21/2011
	Office of Management	Special Assistant	DE110117	6/22/2011
	Office of the Secretary	Special Assistant	DE110109	6/24/2011
ENVIRONMENTAL PROTECTION AGENCY.	Advance Staff	Advance Specialist	EP110034	6/13/2011
	Advance Staff	Deputy Director for Advance	EP110032	6/16/2011
	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Special Assistant	EP110033	6/16/2011
EXPORT–IMPORT BANK	Board of Directors	Senior Advisor	EB110008	6/3/2011
	Board of Directors	Special Assistant	EB110010	6/9/2011
GENERAL SERVICES ADMINISTRATION.	Pacific Rim Region	Regional Administrator	GS110043	6/2/2011
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Planning and Evaluation.	Director of Delivery System Reform.	DH110075	6/14/2011
	Office of the Assistant Secretary for Health.	Director of Communications	DH110104	6/14/2011
	Office of the Assistant Secretary for Public Affairs.	Communications Director for Health Care.	DH110106	6/17/2011
	Office of the Assistant Secretary for Children and Families.	Special Assistant for Children and Families.	DH110108	6/30/2011
DEPARTMENT OF HOMELAND SECURITY.	Office of the Assistant Secretary for Policy.	Special Assistant	DM110195	6/3/2011
	U.S. Customs and Border Protection.	Counselor	DM110203	6/13/2011
	Office of the Under Secretary for National Protection and Programs Directorate.	Program Coordinator	DM110192	6/14/2011
	Office of the Under Secretary for National Protection and Programs Directorate.	Special Advisor	DM110208	6/29/2011
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Policy Development and Research.	Special Policy Advisor	DU110026	6/15/2011
DEPARTMENT OF THE INTERIOR.	Assistant Secretary—Water and Science.	Counselor- Water and Science	DI110071	6/28/2011
DEPARTMENT OF JUSTICE	Office of the Deputy Attorney General.	Senior Counsel	DJ110094	6/14/2011
	Office of the Deputy Attorney General.	Senior Counsel	DJ110095	6/15/2011
DEPARTMENT OF LABOR	Office of the Assistant Secretary for Policy.	Special Assistant	DL110028	6/10/2011
	Secretary for Policy.			
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of the Administrator	Special Advisor	NN110021	6/7/2011
	Office of the Deputy Administrator	Executive Officer	NN110051	6/7/2011
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of the United States Trade Representative.	Personal Assistant	TN110010	6/2/2011
SMALL BUSINESS ADMINISTRATION.	Office of Field Operations	Associate Administrator for Field Operations.	SB110032	6/24/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Congressional and Legislative Affairs.	Special Assistant for Congressional and Legislative Affairs.	SB110033	6/24/2011
DEPARTMENT OF TRANSPORTATION.	Assistant Secretary for Governmental Affairs.	Associate Director for Governmental Affairs.	DT110041	6/2/2011
	Assistant Secretary for Governmental Affairs.	Deputy Assistant Secretary for Governmental Affairs.	DT110045	6/24/2011
	Assistant Secretary for Governmental Affairs.	Associate Director for Governmental Affairs.	DT110046	6/24/2011
DEPARTMENT OF THE TREASURY.	Assistant Secretary (Legislative Affairs).	Special Assistant	DY110094	6/17/2011
	Assistant Secretary (Legislative Affairs).	Special Assistant	DY110095	6/22/2011
	Assistant Secretary (Legislative Affairs).	Special Assistant	DY110095	6/22/2011

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–21808 Filed 8–24–11; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

CFC–50 Commission Meeting

AGENCY: Office of Personnel Management.

ACTION: Establishment of advisory committee.

SUMMARY: The CFC–50 Advisory Commission will hold its initial meeting on September 13, 2011, at the time and location shown below. The Commission shall advise the Director of the U.S. Office of Personnel Management (OPM) on strengthening the integrity, the operation and effectiveness of the Combined Federal Campaign (CFC) to ensure its continued growth and success. The Commission is an advisory committee composed of Federal employees, private campaign administrators, charitable organizations and ''watchdog'' groups. The Commission is co-chaired by Thomas Davis and Beverly Byron.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Commission at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: September 13, 2011 at 2 p.m.

Location: U.S. Office of Personnel Management, Theodore Roosevelt Executive Conference Room, 5th Floor, Theodore Roosevelt Building, 1900 E St. NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Keith Willingham, Director, Combined Federal Campaign, U.S. Office of Personnel Management, 1900 E St. NW., Suite 6484, Washington, DC 20415. Phone (202) 606–2564 FAX (202) 606–5056 or e-mail at *cfc@opm.gov*.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–21779 Filed 8–24–11; 8:45 am]

BILLING CODE 6325–46–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–48; Order No. 813]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ida, Arkansas post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* September 1, 2011; *deadline for notices to intervene:* September 12, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on August 17, 2011, the Commission received a petition for review of the Postal Service's determination to close the post office in Ida, Arkansas. The petition was filed by Earlene Cannon on behalf of the Committee to Save Ida Post Office (Petitioner) and is postmarked August 9, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–48 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than September 21, 2011.

Categories of issues apparently raised. Petitioner contends that there are factual errors contained in the Final Determination.

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 1, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 1, 2011.

Availability; Web site posting. The Commission has posted the appeal and

supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before September 12, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 1, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 1, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

August 17, 2011	Filing of Appeal.
September 1, 2011.	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 1, 2011.	Deadline for the Postal Service to file any responsive pleading.
September 12, 2011.	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
September 21, 2011.	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 11, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
October 26, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 2, 2011.	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 7, 2011.	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–21691 Filed 8–24–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. R2011–6; Order No. 812]

Postal Service Rate Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request concerning a Type 2 rate adjustment. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* August 25, 2011.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 12, 2011, the Postal Service filed a notice pursuant to 39 U.S.C. 3622(c)(10) and 39 CFR 3010.40 *et seq.* concerning a Type 2 rate adjustment.[1] The Notice concerns the Postal Service's accession to the Exprès Service Agreement, a multilateral agreement that covers the delivery of cross-border letters, flats, and small packets (LC/AO) items weighing up to 2 kilograms tendered as Exprès Items and branded with the Common Logo. Notice at 1, Attachment 2.

The Postal Service explains that the Exprès Service Agreement establishes a delivery confirmation service for inbound Letter Post in the form of letters, flats, and small packets, which is currently in use for mailings between 24

[1] Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 12, 2011 (Notice). *See also* Docket Nos. MC2010–35, R2010–5 and R2010–6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

countries. *Id.* at 6. The agreement provides that the Exprès Items service was developed as '' 'a product with reliable, consistent delivery, track, & trace features and a common logo.' '' *Id.* at 6–7, Attachment 2 at 1 (footnote omitted). Article 12 of the Exprès Service Agreement states that any postal operator that is a postal administration as interpreted by the Universal Postal Union (UPU) can accede to the agreement by executing a Deed of Accession and delivering it to the group's Steering Committee. *Id.* at 5–6.

Related agreements. In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and two functionally equivalent agreements, Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement), and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (CPG Agreement). In Order No. 700, the Commission approved the HongKong Post Agreement. The Postal Service states that both the CPG and HongKong Post Agreements contain annexes which include a Small Packet with Delivery Scanning service. Notice at 1–2. It maintains that the delivery confirmation service included in the Exprès Service Agreement is functionally equivalent to the delivery confirmation service provided with the Small Packet with Delivery Scanning service that is included in the CPG Agreement. *Id.* at 2. The Postal Service asserts that because the Exprès Service Agreement delivery confirmation service is similar to the CPG Agreement scanning service, it should be included as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product established in Docket Nos. MC2010–35, R2010–5 and R2010–6. *Id.*

The Postal Service states that the Governors have authorized Type 2 rate adjustments for negotiated service agreements in accordance with 39 CFR 3010.40 *et seq.* that will result generally in more remunerative rates than the default rates set by the UPU Acts for inbound Letter Post items. *Id.* at 1. In accordance with Article 12 of the Exprès Service Agreement, the Postal Service's accession will become effective on the first day of the second month following approval by the Steering Committee. *Id.* at 5. The Postal Service states if the accession is approved during the month of August, it expects the effective date to be October 1, 2011. *Id.*

In support of its Notice, the Postal Service filed three attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal;
- Attachment 2—a redacted copy of the Exprès Service Agreement, including applicable annexes; and
- Attachment 3—redacted copies of documents related to the Postal Service's deed of accession, including notice and technical specifications.

The Postal Service states its filings comply with 39 CFR 3010.40 *et seq.* for the implementation of a negotiated service agreement. The Notice identifies performance attributes associated with the agreement, *e.g.,* delivery confirmation service for letter-class flats, letters, and packets using a specific barcode, and incentive to improve mail processing efficiency for remuneration based on timely delivery and return of scans for Exprès Items. *Id.* at 7–8.

Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service indicates that it intends to report information on this agreement through its Annual Compliance Report. While indicating its willingness to provide information on mail flows within the annual compliance review process, the Postal Service proposes that no special data collection plan be established for this agreement. With respect to performance measurement, it requests that the Commission exempt this agreement from separate reporting requirements under 39 CFR 3055.3 as determined in Order Nos. 549 and 570 for the agreements in Docket Nos. R2010–5, R2010–6 and R2011–4. *Id.* at 10.

Functional equivalency. The Postal Service advances reasons why the agreement is functionally equivalent to the previously filed TNT and CPG Agreements, and contains the same attributes and methodology.[2] *Id.* at 12–16. It asserts that the instant agreement fits within the Mail Classification Schedule language for the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. Additionally, it states that it includes similar terms and conditions, *e.g.,* is with a foreign postal operator, incorporates similar attributes and methodology for delivery confirmation services, conforms to a common description, and applies to rates for letter-class items tendered from the postal operator's territory similar to the Small Packets with Delivery Scanning service included with the CPG and HongKong Post Agreements. *Id.* at 12–13.

The Postal Service identifies specific terms that distinguish the instant agreement from the CPG Agreement. *Id.* at 13–15. These distinctions include an indefinite term, single service nature, multilateral scope, applicability to letter-class flats, letters, and packets, and other differences. The Postal Service contends that the instant agreement is nonetheless functionally equivalent to existing agreements and ''[t]he Postal Service does not consider that the specified differences affect the fundamental service the Postal Service is offering.'' *Id.* at 16.

In its Notice, the Postal Service maintains that certain portions of the agreement, prices, and related financial information should remain under seal. *Id.* at 16, Attachment 1.

The Postal Service concludes that the Exprès Service Agreement should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 16.

II. Notice of Filings

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than August 25, 2011. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Emmett Rand Costich to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2011–6 to consider matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than August 25, 2011.

[2] The Postal Service states that because there is no ''baseline agreement'' in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, it has based its functional equivalency comparison primarily on the CPG Agreement since the CPG Agreement includes rates for ''Small Packet with Delivery Scanning'' and the TNT Agreement does not include rates for a service described as ''Global Confirmation Over 2 lbs.''

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–21690 Filed 8–24–11; 8:45 am]

BILLING CODE 7710–FW–P

COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65153; File No. S7–32–11]

Acceptance of Public Submissions Regarding the Study of Stable Value Contracts

AGENCY: Commodity Futures Trading Commission; Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') was enacted on July 21, 2010. Section 719(d) of the Dodd-Frank Act mandates that the Commodity Futures Trading Commission (the ''CFTC'') and the Securities and Exchange Commission (the ''SEC'' and, together with the CFTC, the ''Commissions'') jointly conduct a study to determine whether stable value contracts (''SVCs'') fall within the definition of a swap. Section 719(d) of the Dodd-Frank Act also requires that the Commissions, in making that determination, jointly consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of SVCs. Further, Section 719(d) of the Dodd-Frank Act provides that if the Commissions determine that SVCs fall within the definition of a swap, they jointly shall determine if an exemption for SVCs from the definition of a swap is appropriate and in the public interest. In connection with this study, the Commissions' staffs seek responses of interested parties to the questions set forth below.

DATES: Please submit comments in writing on or before September 26, 2011.

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

CFTC

• *Agency Web site*, via its Comments Online process: *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

• *Mail:* David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

• *Hand Delivery/Courier:* Same as mail above.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method. ''*Stable Value Contract Study*'' must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the CFTC's regulations.[1]

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, including obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under applicable laws, and may be accessible under the Freedom of Information Act.

SEC

Electronic Comments

Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*);

Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–32–11 on the subject line; or

Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. All submissions should refer to File Number S7–32–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for Web site viewing and printing in the SEC's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the SEC does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: *CFTC:* Stephen A. Kane, Consultant, Office of the Chief Economist, (202) 418–5911, *skane@cftc.gov*; or David E. Aron, Counsel, Office of the General Counsel, (202) 418–6621, *daron@cftc.gov*, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; *SEC:* Matthew A. Daigler, Senior Special Counsel, (202) 551–5500, Donna Chambers, Special Counsel, (202) 551–5500, or Leah Drennan, Attorney-Adviser, (202) 551–5500, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On July 21, 2010, President Obama signed the Dodd-Frank Act into law.[2] Pursuant to section 719(d)(1)(A) of the Dodd-Frank Act, the Commissions jointly must conduct a study, not later than 15 months after the date of enactment of the Dodd-Frank Act, to determine whether SVCs fall within the definition of a swap.[3] Section 719(d)(1)(A) of the

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act is available at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf.*

[3] The term ''swap'' is defined in Commodity Exchange Act (''CEA'') section 1a(47), 7 U.S.C. 1a(47). The term ''security-based swap'' is defined as an agreement, contract, or transaction that is a ''swap'' (without regard to the exclusion from that definition for security-based swaps) and that also has certain characteristics specified in the Dodd-Frank Act. *See* section 3(a)(68) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(68). Thus, a determination regarding whether SVCs fall within the definition of a swap also is relevant to a determination of whether SVCs fall within the definition of the term ''security-based swap.'' These terms are the subject of further definition in joint proposed rulemaking by the Commissions. *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, File No. S7–16–11, 76 FR 29818

Dodd-Frank Act also requires the Commissions, in making such determination, jointly to consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of SVCs.

If the Commissions determine that SVCs fall within the definition of a swap, they jointly must determine if an exemption for SVCs from the definition of a swap is appropriate and in the public interest.[4] Until the effective date of any regulations enacted pursuant to Section 719(d) of the Dodd-Frank Act, and notwithstanding any other provision of Title VII of the Dodd-Frank Act, the Title VII requirements will not apply to SVCs.[5]

Section 719(d)(2) of the Dodd-Frank Act defines a ''stable value contract'' as:

> any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other State or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in an employee benefit plan (as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, including plans described in section 3(32) of such Act) subject to participant direction, an eligible deferred compensation plan (as defined in section 457(b) of the Internal Revenue Code of 1986) that is maintained by an eligible employer described in section 457(e)(1)(A) of such Code, an arrangement described in section 403(b) of such Code, or a qualified tuition program (as defined in section 529 of such Code).[6]

The Commissions' staffs understand that stable value funds (''SVFs'') are a type of investment commonly offered through 401(k) and other defined contribution plans with the objective of providing preservation of principal, liquidity, and current income at levels that are typically higher than those provided by money market funds.[7] The Commissions' staffs further understand that SVCs are components of SVFs that SVF sponsors or managers purchase from SVC providers, including banks and insurers, that provide a guarantee, or ''wrap,'' by the service provider to pay plan participants at ''book value'' should the market value of the SVF be worth less than the amount needed to pay that book value.[8] In furtherance of this SVC study, the Commissions' staffs seek responses to the any or all of the questions below. Commenters are encouraged to provide additional relevant information, including empirical evidence where appropriate and to the extent feasible, beyond that called for by these questions.

Swap Definitional and Exemptive Issues

1. Do SVCs possess characteristics that would cause them to fall within the definition of a swap? If so, please describe those characteristics.

2. What characteristics, if any, distinguish SVCs from swaps?

3. Does the definition of the term ''stable value contract'' in Section 719(d)(2) of the Dodd-Frank Act encompass all of the products commonly known as SVCs?

4. Are the proposed rules and the interpretive guidance set forth in the Product Definitions Proposing Release[9] useful, appropriate, and sufficient for persons to consider when evaluating whether SVCs fall within the definition of a swap? If not, why not? Would SVCs satisfy the test for insurance provided in the Product Definitions Proposing Release? Why or why not? Is additional guidance necessary with regard to SVCs in this context? If so, what further guidance would be appropriate? Please explain.

5. If the Commissions were to determine that SVCs fall within the definition of a swap, what would be their underlying reference asset?

6. If the Commissions were to determine that SVCs fall within the definition of a swap, what facts and considerations, policy and otherwise, would support exempting SVCs from the definition of a swap? What facts and considerations, policy and otherwise, would not support exempting SVCs from the definition of a swap?

7. If the Commissions were to (a) Determine that SVCs fall within the definition of a swap but provide an exemption from the definition of a swap, (b) determine that SVCs fall within the definition of a swap and not provide an exemption from such definition, or (c) determine that such contracts are not swaps, what beneficial or adverse regulatory or legal consequences, if any, could result? For example, could any of such determinations lead to beneficial or adverse treatment under the Employee Retirement Income Security Act (''ERISA''), bankruptcy law, tax law, or accounting standards, as compared to the regulatory regimes applicable to SVCs, in the event that the Commissions were to determine that SVCs are not swaps or grant an exemption from the definition of a swap?

Market and Product Structure Issues

8. What are the different types of SVCs, how are they structured, and what are their uses? Please describe in detail.

9. Please describe the operation of SVCs and SVFs generally in terms of contract structure, common contract features, investments, market structure, SVC providers, regulatory oversight, investor protection, benefits and drawbacks, risks inherent in SVCs, and any other information that commenters believe the Commissions should be aware of in connection with the SVC study.

10. What provisions of SVCs, if any, allow SVC providers to terminate SVCs that prevent benefit plan investors from transacting at book value? What are the trade-offs, including the costs and benefits of such provisions? Please describe in detail.

11. Describe the benefits and risks of SVCs for SVC providers. How do SVC providers mitigate those risks? Please provide detailed descriptions. How effective are any such measures?

12. Describe the benefits and risks of SVCs for investors in SVFs. Please provide detailed descriptions.

13. The Commissions' staffs understand that SVC providers sometimes negotiate so-called ''immunization'' provisions with SVF managers and that such provisions typically allow SVC providers (or SVF managers) to terminate the SVCs based upon negotiated triggers, which can include underperformance of the portfolio against a benchmark. The Commissions' staffs also understand that, once immunization provisions have been triggered and are in effect, the

(May 23, 2011) (''Product Definitions Proposing Release''). Citations herein to provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934 refer to the numbering of those provisions after the effective date of Title VII.

[4] *See* section 719(d)(1)(B) of the Dodd-Frank Act. Pursuant to section 719(d)(1)(B) of the Dodd-Frank Act, ''The Commissions shall issue regulations implementing the determinations required under this paragraph.''

[5] *See* section 719(d)(1)(C) of the Dodd-Frank Act.

[6] The Commissions understand that a bank, insurance company, or other state or federally regulated financial institution that offers an SVC is commonly referred to as an ''SVC provider.''

[7] *See, e.g.,* U.S. Government Accountability Office, *401(K) Plans: Certain Investment Options and Practices That May Restrict Withdrawals Not Widely Understood,* at 10–11, GAO–11–234 (Washington, DC: Mar. 10, 2011); Proposed Exemptions From Certain Prohibited Transaction Restrictions, Department of Labor, 75 FR 61932, 61938 (Oct. 6, 2010).

[8] *See 401(K) Plans: Certain Investment Options and Practices That May Restrict Withdrawals Not Widely Understood, supra* note 7, at 11. In the context of an SVC, the staffs understand, based on conversations with market participants, that the term ''book value'' means investment principal plus interest accrued using the crediting rate formula determined for the SVF and set forth in the SVC.

[9] *See supra* note 3. The Commissions note that any comment submitted in response to this question will be taken into consideration by the Commissions as they consider any final action on the Product Definitions Proposing Release.

SVF must be managed according to the immunization guidelines, which typically require the liquidation of all securities rated below AAA and in certain cases may require the portfolio to be invested 100% in Treasury securities. What risks, if any, do ''immunization'' provisions in SVCs pose to investors in SVFs? If immunization provisions in SVCs pose risks to investors in SVFs, are these risks clearly disclosed to investors? Are these risks required to be disclosed to investors? What are the sources of such requirements? How do SVF managers or SVC providers address the risk that immunization will be exercised? How effective are any such measures?

14. The Commissions' staffs understand that some SVCs grant SVC providers the right to limit coverage of employer-driven events or employee benefit plan changes. Such events or changes could cause a decrease in a SVF's value and result in large scale investor withdrawals or redemptions (sometimes called a ''run on the fund''). How do SVC providers and SVF managers manage this risk, if at all? How effective are any such measures?

15. The Commissions' staffs understand that SVF managers infuse capital into their funds in certain instances. Please describe the circumstances under which an SVF fund manager would provide such capital support for its fund.

16. The Commissions' staffs understand that ''pull to par'' provisions of SVCs provide that SVCs will not terminate (absent the application of another contract termination provision) until the gap between the market value of the wrapped assets and the SVC book value is closed, however long that takes. The Commissions' staffs also understand that pull to par provisions are standard for SVCs. Are these understandings correct? Please describe pull to par provisions and how prevalent such provisions are in SVCs.

17. How have SVFs and SVCs been affected by the recent financial crisis? How many SVC providers are in the market today? Is the number of SVC providers higher or lower than prior to the financial crisis that began in 2008? Are fees now higher or lower than prior to the financial crisis?

18. Do investors have incentives to make a run on a SVF when its market-to-book ratio is substantially below one? What protections, if any, do SVCs provide to protect fund investors who do not redeem their fund shares amid a run on the fund? How effective are any such protections?

19. How do market risk measures assess the risk of a run on a SVF? To the extent that SVC providers use value-at-risk (''VaR'') models, do such VaR models adequately assess the risk of loss resulting from such events or other possible but extremely unlikely events? Do other loss models more adequately assess the risk of loss, such as the expected value of a loss or the expected value given a loss, which employs the entire loss probability distribution without excluding events in the extreme tail of the loss distribution?

20. Are certain SVC providers more likely, as a result of credit cyclicality, to become financially distressed? If so, is such financial distress likely to occur concurrently with financial distress of SVFs? If so, can the risk of such concurrent financial distress be mitigated? How effective are any such measures?

21. Do SVC providers pose systemic risk concerns? Are there concerns with entities that may be systemically important institutions providing SVCs? What are the consequences for SVFs, employee benefit/retirement plans, and the financial system should an SVC provider fail?

22. Are there issues specific to financial institutions providing SVCs, including institutions that are systemically significant, that the Commissions should consider in connection with the SVC study? If so, please describe.

Regulatory Issues

23. What disclosures to benefit plan investors in SVFs currently are required, and what are the sources of such requirements? What additional disclosure typically is provided, either voluntarily or on request? What additional disclosure, if any, would be warranted and why would it be warranted? Please explain in detail.

24. What financial and regulatory protections currently exist that are designed to ensure that SVC providers can meet their obligations to investors, and what are the sources of such protections? Does the level of protection vary depending on the SVC provider? How effective are any such measures?

25. Currently, do entities other than state-regulated insurance companies and federally- or state-regulated banks provide SVCs? If so, what kinds of entities do so and how are they regulated? If not, are there any barriers to the provision of SVCs by entities other than state-regulated insurance companies and federally- or state-regulated banks?

26. What role do SVF managers play in protecting the interests of plan participants with respect to SVFs? How effective are any such measures?

Compliance Issues if the Commissions Were To Determine SVCs Were Swaps

27. If the Commissions were to determine that SVCs fall within the definition of a swap and should not be exempted from such definition, should the regulatory regime for SVCs be limited or tailored in any way? If so, how? Please explain in detail. Should any of the requirements for capital and margin for SVCs differ from those for swaps that are not SVCs? Why or why not? If the requirements for capital and margin should differ, please explain in detail what those differences should be.

28. If the Commissions were to determine that SVCs fall within the definition of a swap and should not be exempted from such definition, would the requirements of any regulatory regime for swaps impact fee structures or fees charged by SVC providers? Please describe (quantitatively, if possible) the relationship of any new federal regulation under the Dodd-Frank Act to possible changes in fee structures or fees, to the extent feasible, and state any assumptions used in quantifying such relationship.

29. If the Commissions were to determine that SVCs fall within the definition of a swap and should not be exempted from such definition, would this decision influence the availability of SVFs to investors? Would this designation affect existing SVFs and the ability of SVFs to purchase SVCs? If so, how and why?

Dated: August 18, 2011.

By the Commodity Futures Trading Commission.

David A. Stawick,

Secretary.

Dated: August 18, 2011.

By the Securities and Exchange Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21645 Filed 8–24–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Puda Coal, Inc.; Order of Suspension of Trading

August 19, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Puda Coal, Inc. (''Puda'') because (1) Puda's auditors resigned on July 7, 2011 and stated that further reliance should no

longer be placed on its previously issued audit reports dated March 31, 2010 and March 16, 2011; and (2) the Audit Committee of Puda's Board of Directors has announced that it has preliminarily concluded that evidence supports the allegation that there were transfers by Puda's Chairman in subsidiary ownership that were inconsistent with disclosure made by the Company in its public securities filings. Puda is quoted on the OTC Pink Market operated by the OTC Markets Group Inc. under the symbol PUDA.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the company listed above.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the companies listed above is suspended for the period from 5:30 p.m. EDT, August 19, 2011, through 11:59 p.m. EDT, on September 1, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21777 Filed 8–22–11; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 7565]

Certification Related to Aerial Eradication in Colombia

Pursuant to the authority vested in the Secretary of State, including under the International Narcotics Control and Law Enforcement section of the Department of State Foreign Operations and Related Programs Appropriations Act, 2010, (Division F, Pub. L. 111–117), as carried forward by The Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Div. B, Title XI, Pub. L. 112–10), I hereby determine and certify that: (1) The herbicide used for aerial eradication of illicit crops in Colombia is being used in accordance with EPA label requirements for comparable use in the United States and in accordance with Colombian laws; (2) the herbicide, in the manner it is being used, does not pose unreasonable risks or adverse effects to humans or the environment including endemic species; and (3) complaints of harm to health or licit crops caused by such aerial eradication are thoroughly evaluated and fair compensation is being paid in a timely manner for meritorious claims.

This certification shall be published in the **Federal Register**, and copies shall be transmitted to the appropriate committees of Congress.

Dated: August 11, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–21748 Filed 8–24–11; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF STATE

[Public Notice 7457]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 4 p.m. on Tuesday, September 13, 2011, in room 1107 of the Harry S. Truman Building at the U.S. Department of State, 2201 C Street, NW., Washington, DC. The meeting will be hosted by the Assistant Secretary of State for Economic, Energy, and Business Affairs Jose W. Fernandez and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on U.S.-Brazil Relations: Key Opportunities for Cooperation with an Emerging Power. Subcommittee reports and discussions will be led by the Investment Subcommittee, the Economic Sanctions Subcommittee, and the Subcommittee on Women in International Economic Policy.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Friday, September 9 their name, professional affiliation, valid government-issued ID number (i.e., U.S. Government ID [agency], U.S. military ID [branch], passport [country], or driver's license [state]), date of birth, and citizenship to Sherry Booth by fax (202) 647–5936, e-mail (*Boothsl@state.gov*), or telephone (202) 647–0847.

One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U.S. Government identification card, or any valid passport. Enter the Department of State from the entrance on 23rd Street. In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins. Requests for reasonable accommodation should be made to Sherry Booth prior to Monday, September 7th. Requests made after that date will be considered, but might not be possible to fulfill.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

For additional information, contact Deputy Outreach Coordinator Tiffany Enoch, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647–2231 or *EnochT@state.gov.*

Dated: August 19, 2011.

Maryruth Coleman,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, U.S. Department of State.

[FR Doc. 2011–21749 Filed 8–24–11; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice: 7549]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet on September 12 and September 13 at the Department of State, 2201 ''C'' Street, NW., Washington, DC. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Nick Sheldon, Office of the Historian (202–663–1123) no later than September 8, 2011 to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Nick Sheldon for acceptable alternative forms of picture identification. In addition, any requests for reasonable accommodation should be made no later than September 6,

2011. Requests for reasonable accommodation received after that time will be considered, but might be impossible to fulfill. The Committee will meet in open session from 11 a.m. until 12 Noon on Monday, September 12, 2011, in the Department of State, 2201 ''C'' Street, NW., Washington, DC, in Conference Room 1205, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions in the afternoon on Monday, September 12, 2011 and in the morning on Tuesday, September 13, 2011, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure. Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Pub. L. 107–56 (U.S.A. PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf,* for additional information.

Questions concerning the meeting should be directed to Ambassador Edward Brynn, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: August 17, 2011.

Edward Brynn,

Executive Secretary, Advisory Committee on Historical, Diplomatic Documentation, Department of State.

[FR Doc. 2011–21751 Filed 8–24–11; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Lake in the Hills Airport, Lake in the Hills, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of portions of Parcels 4, 5 and 6, totaling 10.688 acres, and an easement on a 0.88-acre portion of Parcel 5. Presently the land is vacant and used as open land for control of FAR Part 77 surfaces and compatible land use and is not needed for aeronautical use, as shown on the Airport Layout Plan. The Parcels were acquired with Federal participation. It is the intent of the Village of Lake in the Hills, as owner and operator of the Lake in the Hills Airport (3CK) to sell portions of Parcels 4, 5 & 6 (10.688 Acres) in fee to the City of Crystal Lake, McHenry County Division of Transportation (McHDOT), and McHenry County Conservation District (MCCD), based on local jurisdiction, for the relocation of Pyott Road. 3CK would also grant a permanent easement for utilities to the City of Crystal Lake (0.88 acres). 3CK would, in return, receive the 15.838 acres of land, in fee, from the City of Crystal Lake, McHDOT and MCCD. This notice announces that the FAA is considering the proposal to authorize the disposal of the subject airport property at the Lake in the Hills Airport, Lake in the Hills, IL. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Pur, Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone Number 847–294–7527/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location by appointment or at the Lake in the Hills Airport, 8407 Pyott Road, Lake in the Hills, IL 60156.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in McHenry County, Illinois, and described as follows:

Portion of Parcel 5 (to Crystal Lake)

That part of the Northwest Quarter of Section 16, Township 43 North, Range 8 East of the Third Principal Meridian, McHenry County, Illinois, more particularly described as follows:

Commencing at the Northwest Corner of said Section 16, thence South 0° − 37′ − 12″ East (bearings assumed for description purposes only) along the west line of said Northwest Quarter 584.34 feet to a point on the north line of the parcel described in Trustee's Deed dated July 26, 2007, and recorded August 7, 2007, as Document No. 2007R0053990; thence North 89° − 22′ − 48″ East along said north line 155.07 feet to be the Point of Beginning of the Parcel to be described;

From the Point of Beginning, thence continuing North 89° − 22′ − 48″ East along said north line 21.88 feet; thence South 23° − 18′ − 28″ East 90.77 feet; thence along a curve to the left an arc distance of 242.62 feet, said curve having a radius of 875.00 feet and a chord bearing South 24° − 42′ − 06″ East 241.85 feet; thence South 32° − 38′ − 43″ East 560.59 feet; thence along a curve to the right an arc distance of 763.82 feet, said curve having a radius of 1,065.00 feet and a chord bearing of South 12° − 05′ − 56″ East 747.55 feet; thence South 8° − 26′ − 51″ West 293.12 feet; thence along a curve to the left an arc distance of 35.84 feet, said curve having a radius of 180.00 feet and a chord bearing of South 2° − 44′ − 37″ West 35.78 feet; thence North 70° − 50′ − 49″ West 21.41 feet; thence along a curve to the right an arc distance of 31.76 feet, said curve having a radius of 200.00 feet and a chord bearing North 3° − 53′ − 55″ East 31.72 feet; thence North 8° − 26′ − 51″ East 293.12 feet; thence along a curve to the left an arc distance of 749.48 feet, said curve having a radius of 1045.00 feet and a chord bearing North 12° − 05′ − 56″ West 733.52 feet; thence North 32° − 38′ − 43″ West 560.59 feet; thence along a curve to the right an arc distance of 255.50 feet, said curve having a radius of 895.00 feet and a chord bearing North 24° − 28′ − 01″ West 254.63 feet; thence North 23° − 18′ − 28″ East 89.14 feet to the Point of Beginning.

Said Sub-Parcel contains 0.911 acres, more or less.

Portion of Parcel 5 (Easement to Crystal Lake)

That Part of the Northwest Quarter of Section 16, Township 43 North, Range 8 East

of the Third Principal Meridian, McHenry County, Illinois, more particularly described as follows:

Commencing at the West Quarter Corner of said Section 16, thence North 89°−54′−22″ East (bearings assumed for description purposes only) along the south line of said Northwest Quarter 306.71 feet to the Point of Beginning of the Utility Easement to be described;

From the Point of Beginning, thence continuing North 89°−54′−22″ East along said south line 21.18 feet; thence North 19°−09′−01″ East 450.10 feet; thence along a curve to the left an arc distance of 813.60 feet, said curve having a radius of 900.00 feet and a chord bearing North 6°−44′−51″ West 786.18 feet; thence North 32°−38′−43″ West 560.59 feet; thence along a curve to the right an arc distance of 115.82 feet to a point on the east right of way line of the existing Pyott Road as described in Trustee's Deed dated July 27, 1993, and recorded August 16, 1993, as Document No. 93R048243, said curve having a radius of 1040.00 feet and a chord bearing North 29°−27′−18″ West 115.76 feet; thence South 0°−30′−01″ West along said east right of way line 42.88 feet; thence along a curve to the left an arc distance of 79.75 feet, said curve having a radius of 1,060.00 feet and a chord bearing South 30°−29′−23″ East 79.73 feet; thence South 32°−38′−43″ East 560.59 feet; thence along a curve to the right an arc distance of 795.52 feet, said curve having a radius of 880.00 feet and a chord bearing of South 6°−44′−51″ East 768.71 feet; thence South 19°−09′−01″ West 457.08 feet to the Point of Beginning.

Said Utility Easement contains 0.880 acres, more or less.

Portion of Parcels 5 & 6 (to MCCD)

That part of the Northwest Quarter of Section 16, Township 43 North, Range 8 East of the Third Principal Meridian, McHenry County, Illinois, more particularly described as follows:

Commencing at the Northwest Corner of said Section 16, thence South 0°−37′−12″ East (bearings assumed for description purposes only) along the west line of said Northwest Quarter 371.48 feet; thence North 89°−22′−48″ East 50.60 feet to a point on the east right of way line of Pyott Road as described in Trustee's Deed dated July 27, 1993, and recorded August 16, 1993, as Document No. 93R048243, said point being on a line parallel with and 25.00 feet, measured perpendicular, west of the east line of the parcel described in Trustee's Deed dated May 12, 2008, and recorded May 16, 2008, as Document No. 2008R0028725, said point to be the Point of Beginning of the Parcel to be described;

From the Point of Beginning, thence South 0°−37′−12″ East along said parallel line and east right of way line 57.03 feet; thence southerly along a curve to the left an arc distance of 63.92 feet, said curve being concentric with and 25.00 feet, measured radial, west of the east line of the parcel described in Trustee's Deed dated May 12, 2008, and recorded May 16, 2008, as Document No. 2008R0028725, said curve having a radius of 333.67 feet and a chord bearing South 6°−06′−29″ East 63.82 feet; thence continuing along said parallel line South 11°−35′−45″ East 94.02 feet to a point on the north line of the parcel described in Trustee's Deed dated July 26, 2007, and recorded August 7, 2007, as Document No. 2007R0053990; thence North 89°−22′−48″ East along said north line 0.11 feet; thence southeasterly along a curve to the left an arc distance of 353.17 feet, said curve having a radius of 920.00 feet and a chord bearing South 21°−38′−53″ East 351.00 feet; thence South 32°−38′−43″ East 560.59 feet; thence southerly along a curve to the right an arc distance of 731.55 feet, said curve having a radius of 1,020.00 feet and a chord bearing of South 12°−05′−56″ East 715.97 feet; thence South 8°−26′−51″ West 293.12 feet; thence easterly along a curve to the left an arc distance of 388.05 feet, said curve having a radius of 225.00 feet and a chord bearing South 40°−57′−37″ East 341.71 feet; thence North 89°−38′−04″ East 281.07 feet; thence North 75°−43′−28″ East 86.21 feet to a point on the west right of way line of the former Chicago & Northwestern Railroad Company; thence North 19°−14′−01″ West along said west line 25.09 feet; thence South 75°−43′−28″ West 80.99 feet; thence South 89°−38′−04″ West 278.02 feet; thence westerly along a curve to the right an arc distance of 344.93 feet, said curve having a radius of 200.00 feet and a chord bearing North 40°−57′−37″ West 303.74 feet; thence North 8°−26′−51″ East 293.12 feet; thence northerly along a curve to the left an arc distance of 749.48 feet, said curve having a radius of 1045.00 feet and a chord bearing North 12°−05′−56″ West 733.52 feet; thence North 32°−38′−43″ West 560.59 feet; thence northerly along a curve to the right an arc distance of 255.50 Feet, said curve having a radius of 895.00 feet and a chord bearing North 24°−28′−01″ West 254.63 feet; thence North 23°−18′−28″ East 89.14 feet, to a point on said north line; thence South 89°−22′−48″ West along said north line 55.00 feet to a point on said east line; thence North 11°−35′−45″ West along said east line 98.87 feet; thence continuing along said east line along a curve to the right an arc distance of 59.13 feet, said curve having a radius of 308.67 feet and a chord bearing North 6°−06′−29″ West 59.04 feet; thence North 0°−37′−12″ West continuing along said east line 57.03 feet; thence South 89°−22′−48″ West 25.00 feet to the Point of Beginning.

Said Sub-Parcels contain 1.708 acres, more or less.

Portion of Parcels 4, 5 & 6 (to McHDOT)

That part of the West Half of Section 16, Township 43 North, Range 8 East of the Third Principal Meridian, McHenry County, Illinois, more particularly described as follows:

Commencing at the Northwest Corner of said Section 16, thence South 0°−37′−12″ East (bearings assumed for description purposes only) along the west line of said Northwest Quarter 428.51 feet; thence North 89°−22′−48″ East 50.60 feet to a point on the east right of way line of the existing Pyott Road as described in Trustee's Deed dated July 27, 1993, and recorded August 16, 1993, as Document No. 93R048243, said point being on a line parallel with and 25.00 feet, measured perpendicular, west of the east line of the parcel described in Trustee's Deed dated May 12, 2008, and recorded May 16, 2008, as Document No. 2008R0028725, said point to be the Point of Beginning of the Right of Way Parcel to be described;

From the Point of Beginning, thence along a curve to the left an arc distance of 63.92 feet, said curve being concentric with and 25.00 feet, measured radial west of the east line of the parcel described in Trustee's Deed dated May 12, 2008, and recorded May 16, 2008, as Document No. 2008R0028725, said curve having a radius of 333.67 feet and a chord bearing South 6°−06′−29″ East 63.82 feet; thence continuing along said parallel line South 11°−35′−45″ East 94.02 feet to a point on the north line of the parcel described in Trustee's Deed dated July 26, 2007, and recorded August 7, 2007, as Document No. 2007R0053990; thence North 89°−22′−48″ East along said north line 0.11 feet; thence along a curve to the left an arc distance of 353.17 feet, said curve having a radius of 920.00 feet and a chord bearing South 21°−38′−53″ East 351.00 feet; thence South 32°−38′−43″ East 560.59 feet; thence along a curve to the right an arc distance of 922.08 feet, said curve having a radius of 1,020.00 feet and a chord bearing of South 6°−44′−51″ East 891.00 feet; thence South 19°−09′−01″ West 559.99 feet; thence along a curve to the left an arc distance of 685.36 feet, said curve having a radius of 905.00 feet and a chord bearing of South 2°−32′−42″ East 669.10 feet; thence South 24°−14′−25″ East 79.34 feet to a point on the east line of the parcel described in Warranty Deed dated September 12, 2007, and recorded September 18, 2007, as Document No. 2007R0063395; thence South 0°−02′−03″ East along said east line 25.04 feet to the southeast corner of said parcel; thence South 89°−54′−22″ West along the south line of said parcel 55.08 feet to a point on centerline of Pyott Road; thence North 24°−24′−53″ West along said centerline 501.65 feet; thence North 65°−35′−07″ East 33.00 feet to a point on said east right of way line; thence along a non-tangential curve to the right an arc distance of 341.20 feet, said curve having a radius of 1025.00 feet and a chord bearing North 9°−36′−51″ East 339.63 feet; thence North 19°−09′−01″ East 559.99 feet; thence along a curve to the left an arc distance of 813.60 feet, said curve having a radius of 900.00 feet and a chord bearing North 6°−44′−51″ West 786.18 feet; thence North 32°−38′−43″ West 560.59 feet; thence along a curve to the right an arc distance of 115.82 feet to a point on said east right of way line of Pyott Road, said curve having a radius of 1040.00 feet and a chord bearing North 29°−27′−18″ West 115.76 feet; thence North 0°−30′−01″ East along said east right of way line 383.68 feet; thence North 0°−37′−12″ West continuing along said east right of way line 62.07 feet to the Point of Beginning.

Said Right of Way Parcel, identified as Sub-Parcels contains 8.070 acres, more or less.

Issued in Des Plaines, Illinois on July 18, 2011.

Jim Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2011–21674 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–EZ, Short Form Return of Organization Exempt from Income Tax.

DATES: Written comments should be received on or before October 24, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Joel Goldberger,(202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Short Form Return of Organization Exempt From Income Tax.

OMB Number: 1545–1150.

Form Number: 990–EZ.

Abstract: An annual return is required by Internal Revenue Code section 6033 for organizations exempt from income tax under Code section 501(a). Form 990–EZ is used by tax exempt organizations and nonexempt charitable trusts whose gross receipts are less than $200,000 and whose total assets at the end of the year are less than $500,000 to provide the IRS with the information required by Code section 6033. IRS uses the information from Form 990–EZ to ensure that tax exempt organizations are operating within the limitations of their tax exemption.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 412,315.

Estimated Time per Respondent: 105 hrs., 48 min.

Estimated Total Annual Burden Hours: 43,656,636.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 18, 2011.

Joel Goldberger,

IRS Tax Analyst.

[FR Doc. 2011–21693 Filed 8–24–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–H

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–H, U.S. Income Tax Return for Homeowners Associations.

DATES: Written comments should be received on or before October 24, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Homeowners Associations.

OMB Number: 1545–0127.

Form Number: 1120–H.

Abstract: Homeowners associations file Form 1120–H to report income, deductions, and credits. The form is also used to report the income tax liability of the homeowners association. The IRS uses Form 1120–H to determine if the income, deductions and credits have been correctly computed. The form is also used for statistical purposes.

Current Actions: There are no changes being made to Form 1120–H at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business Time per Respondent 32 hours, 10 minutes.

Estimated Number of Respondents: 112,311.

Estimated Time per Respondent: 32 hrs., 38 minutes.

Estimated Total Annual Burden Hours: 3,665,832.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 16, 2011.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2011–21697 Filed 8–24–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel for Fine Art.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be September 22, 2011.

ADDRESSES: The closed meeting of the Art Advisory Panel for Fine Art will be held on September 22, 2011, beginning at 9:30 a.m., in the 6th Floor Conference Room, Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ruth M. Vriend, C:AP:PV:ART, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5739 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel for Fine Art will be held on September 22, 2011, beginning at 9:30 a.m., in the 6th Floor Conference Room, Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Sheldon Kay,

Deputy Chief, Appeals.

[FR Doc. 2011–21696 Filed 8–24–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on September 12–13, 2011, at the Saint Regis Hotel, 923 16th Street, NW., Washington, DC, from 8:30 a.m. to 3 p.m. This meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Corina Negrescu, M.D., M.P.H., Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail at *Robert.Watkins2@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Dr. Negrescu at (202) 461–9752.

Dated: August 19, 2011.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2011–21692 Filed 8–24–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Commodity Futures Trading Commission

17 CFR Parts 165
Whistleblower Incentives and Protection; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 165

RIN 3038–AD04

Whistleblower Incentives and Protection

AGENCY: Commodity Futures Trading Commission (''Commission'').

ACTION: Final rules.

SUMMARY: The Commission is adopting Final Rules and new forms to implement Section 23 of the Commodity Exchange Act (''CEA'' or ''Act'') entitled ''Commodity Whistleblower Incentives and Protection.'' The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010 (''Dodd-Frank Act''), established a whistleblower program that requires the Commission to pay an award, under regulations prescribed by the Commission and subject to certain limitations, to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the CEA that leads to the successful enforcement of a covered judicial or administrative action, or a related action. The Dodd-Frank Act also prohibits retaliation by employers against individuals who provide the Commission with information about possible CEA violations.

DATES: *Effective Date:* These Final Rules will become effective upon October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Edward Riccobene, Chief, Policy and Review, Division of Enforcement, 202–418–5327, *ericcobene@cftc.gov*, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission is adopting Final Rules 165.1 through 165.19 and Appendix A, thereto, and new Forms TCR (''Tip, Complaint or Referral'') and WB–APP (''Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act''), under the CEA.

I. Background and Summary

Section 748 of the Dodd-Frank Act added new Section 23 to the CEA,[1] entitled ''Commodity Whistleblower Incentives and Protection.'' [2] Section 23 directs that the Commission pay awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the CEA that leads to the successful enforcement of an action brought by the Commission that results in monetary sanctions exceeding $1,000,000, or the successful enforcement of a related action. Section 23 also provides for the protection of whistleblowers against retaliation for reporting information to the Commission and assisting the Commission in its related investigations and enforcement actions.

On December 6, 2010, the Commission proposed Part 165 of the Commission's Regulations to implement new Section 23 (''the Proposed Rules'' or ''Proposing Release'').[3] The rules contained in proposed Part 165 defined certain terms critical to the operation of the whistleblower program, outlined the procedures for applying for awards and the Commission's procedures for making decisions on claims, and generally explained the scope of the whistleblower program to the public and to potential whistleblowers.

The Final Rules include the specific procedures and forms that a potential whistleblower must follow and file to make a claim. The Final Rules also detail the standards that the Commission will use in determining whether an award is appropriate and, if one is appropriate, what the amount of an award should be. The Commission may exercise discretion in granting an award based on the significance of the information, degree of assistance provided in support of a covered judicial or administrative action, programmatic interest, considerations of public policy, and other criteria (other than the balance of the Commodity Futures Trading Commission Customer Protection Fund (''Fund'')). An award shall be denied to certain government employees and others who, for certain stated reasons, are ineligible to be whistleblowers.

The Final Rules also provide that a whistleblower may appeal to the appropriate U.S. Circuit Court of Appeals the Commission's award determination, including the determinations as to whom an award is made, the amount of an award, and the denial of an award. Finally, the Final Rules also provide guidance concerning anti-retaliation provisions of the Dodd-Frank Act.

The Commission received more than 635 comment letters.[4] Over 600 of these comments, sent by or on behalf of different individuals and entities, were variations of the same form letter.[5] The remaining 35 comments were submitted by individuals, whistleblower advocacy groups, public companies, corporate compliance personnel, law firms and individual lawyers, professional associations, and nonprofit organizations. The comments addressed a wide range of issues, including the interplay of the proposed Commission whistleblower program and company internal compliance processes, the proposed exclusion from award eligibility of certain categories of individuals or types of information, the availability of awards to culpable whistleblowers, the procedures for submitting information and making a claim for an award, and the application of the statutory anti-retaliation provision.

As discussed in more detail below, the Commission has carefully considered the comments received on the Proposed Rules in formulating the Final Rules the Commission adopts today. The Commission has also considered the Securities and Exchange Commission's (''SEC['s]'') rulemaking to implement Section 922 of the Dodd-Frank Act, which establishes whistleblower protections and incentives with respect to violations of the securities laws.[6] Where appropriate and consistent with the underlying statutory mandate in Section 23 of the CEA, the Commission has endeavored to harmonize its whistleblower rules with those of the SEC. The Commission has made a number of revisions and refinements to the Proposed Rules in

[1] 7 U.S.C. 1, *et seq.* (2006).

[2] Public Law 111–203, § 748, 124 Stat. 1739 (2010).

[3] Proposed Rules for Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act, Release No. 3038–AD04, 75 FR 75728 (Dec. 6, 2010).

[4] The public comments the Commission received are available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=916.*

[5] The form letters provide no specific comments or requested revisions regarding the Proposed Rules. These letters: express concern that the ''corporate lobby will have undue influence on the final rules to protect whistleblowers;'' allege that ''[t]he SEC proposed rules completely undermine efforts to protect employees who risk their careers to expose fraud;'' and opine that ''the CTFC should not blindly follow any of the SEC's recommendations and should instead write rules will encourage whistleblowers to report commodities fraud.''

[6] *See* Securities Whistleblower Incentives and Protections, 76 FR 34300 (June 13, 2011) (to be codified at 17 CFR 240.21F–1 to 240.21F–17). Commission staff has consulted with SEC staff regarding drafting of rules to implement the Commission's and SEC's respective Dodd-Frank Act whistleblower provisions, Section 748 (Commodity Whistleblower Incentives and Protection) and Section 922 (Whistleblower Protection). To the extent that the Commission and SEC reached the same conclusions on common issues, the Commission endeavored harmonize its rule text with the SEC's final rule text.

order to achieve the goals of the statutory whistleblower program and advance effective enforcement of laws under the CEA. While the revisions of each Proposed Rule are described in more detail throughout this release, the four subjects highlighted below are among the most significant.

Internal Compliance: A significant issue discussed in the Proposed Rules was the impact of the whistleblower program on company systems for internal reporting of potential misconduct.[7] The Commission did not propose a requirement that a whistleblower must report his information internally to an entity to be eligible for an award, and commenters were sharply divided on the issues raised by this topic. Upon consideration of the comments, the Commission has determined that it is inappropriate to require whistleblowers to report violations internally to be eligible for an award. The Commission does, however, recognize that internal compliance and reporting systems ought to contribute to the goal of detecting, deterring and preventing misconduct, including CEA violations, and does not want to discourage employees from using such systems when they are in place. Accordingly, the Commission has tailored the Final Rules as follows:

○ With respect to the criteria for determining the amount of an award, the Final Rules provide that while the amount of an award is within the Commission's discretion, the Commission will consider (i) a whistleblower's report of information internally to an entity's whistleblower, compliance or legal system as a factor that potentially can increase the amount of an award; and (ii) a whistleblower's interference with such internal systems is a factor that can potentially decrease the amount of an award. Rule 165.9(b)(4), (c)(3).

○ A whistleblower may be eligible for an award for reporting original information to an entity's internal compliance and reporting systems if the entity later reports information to the Commission that leads to a successful Commission action or related action. Under this provision, all of the information provided by the entity to the Commission will be attributed to the whistleblower, which means the whistleblower will get credit—and potentially a greater award—for any information provided by the entity to the Commission in addition to the original information reported by the whistleblower. Rule 165.2(i)(3).

Procedures for Submitting Information and Claims: The Proposed Rules set forth a two-step process for submitting information, requiring the submission of two different forms. In response to comments that urged the Commission to streamline the procedures for submitting information, the Commission has adopted a simpler process by combining the two proposed forms into a single ''Form TCR'' to be submitted by a whistleblower, under penalty of perjury. With respect to the claims application process, the Commission has made one section of that form optional to make the process less burdensome.

Aggregation of Smaller Actions to meet the $1,000,000 Threshold: The Proposed Rules stated that awards would be available only when the Commission has successfully brought a single judicial or administrative action in which it obtained monetary sanctions of more than $1,000,000. In response to comments, the Commission has provided in the Final Rules that, for purposes of making an award, the Commission will aggregate two or more smaller actions that arise from the same nucleus of operative facts. This will make whistleblower awards available in more cases.

Exclusions from Award Eligibility for Certain Persons and Information: The Proposed Rules set forth a number of exclusions from eligibility for certain categories of persons and information. In response to comments suggesting that some of these exclusions were overly broad or unclear, the Commission has revised a number of these provisions. Most notably, the Final Rules provide greater clarity and specificity about the scope of the exclusions applicable to senior officials within an entity who learn information about misconduct in connection with the entity's processes for identifying, reporting, and addressing possible violations of law.

Internal Procedural and Organizational Issues: In the Proposing Release, the Commission noted that it would address ''internal procedural and organizational issues'' related to implementation of Section 23 in a future rulemaking.[8] The Final Rules include revisions to reflect the Commission's intent to delegate to a Whistleblower Office the authority to administer the Commission's whistleblower program and to undertake and maintain customer education initiatives through an Office of Consumer Outreach. The Final Rules also provide that the Commission will exercise its authority to make whistleblower award determinations through a delegation of authority to a panel that shall be composed of representatives from three of the Commission's Offices or Divisions.

II. Description of the Rules

A. Rule 165.1—General

Proposed Rule 165.1 provided a general, straightforward description of Section 23 of the CEA, setting forth the purposes of the rules and stating that the Commission administers the whistleblower program. In addition, the Final Rule states that, unless expressly provided for in the rules, no person is authorized to make any offer or promise, or otherwise to bind the Commission, with respect to the payment of an award or the amount thereof.

B. Rule 165.2—Definitions

1. Action

The term ''action'' is relevant for purposes of calculating whether monetary sanctions in a Commission action exceed the $1,000,000 threshold required for an award payment pursuant to Section 23 of the CEA, as well as determining the monetary sanctions on which awards are based.[9] Proposed Rule 165.2(a) defined the term ''action'' to mean a single captioned judicial or administrative proceeding. The Commission proposed to interpret the term ''action'' to include all claims against all defendants or respondents that are brought within that proceeding without regard to which specific defendants or respondents, or which specific claims, were included in the action as a result of the information that the whistleblower provided. With respect to the definition of the term ''action,'' one commenter stated that only those claims in multiple claim enforcement matters that result directly or indirectly from the whistleblower's report should be included in an ''action'' for which a whistleblower is eligible for an award.[10] The commenter reasoned that the proposed definition would encourage the reporting of ''fairly minor violations'' which could cause the Commission to be ''inundated with far more complaints on insignificant matters, thereby clogging a process that is already expected to be cumbersome'' to the Commission.

The Commission has considered, but disagrees with the rationale in support of these comments. In general, any violation, even those that may appear relatively minor (*e.g.*, failure to provide pool participants with timely account statements in violation of Commission Regulation 4.22), may upon investigation be symptomatic of more significant violations (*e.g.*, CPO fraud in violation of Sections 4b and 4*o* of the

[7] *See* 75 FR at 75730.

[8] *See* 75 FR at 75728.

[9] *See* Rule 165.8.

[10] *See* letter from National Society of Compliance Professionals (''NSCP'').

CEA). It would therefore not be in the public interest to discourage the reporting of any violations. Further, to the extent that reporting of relatively minor violations is a potential concern, the Final Rules require that the whistleblower's information must have led to the successful enforcement of a covered judicial or administrative action (*see* Rules 165.2(e), (i), and 165.5(a)(3)). A minor violation by itself is unlikely to result in an enforcement action resulting in monetary sanctions exceeding $1,000,000.

The Commission is making a slight amendment to Rule 165.2(a) as proposed. The Commission has discretion to bifurcate enforcement actions (*e.g.*, one action against the entity and another against culpable individuals). Under the Proposed Rule, the bifurcation of a single enforcement action with aggregate sanctions in an amount greater than $1,000,000 could result in separate but related enforcement actions in which one or more of such actions had sanctions of less than $1,000,000. Under the Proposed Rule, therefore, the bifurcation of an enforcement action into two or more related actions could result in a reduced award for a whistleblower that provided the original information leading to the enforcement actions, or no reward at all. Consequently, the Commission is amending the definition of ''action'' in Rule 165.2(a) to include two or more proceedings that ''arise out of the same nucleus of operative facts.'' [11]

2. Aggregate Amount

Proposed Rule 165.2(b) defined the phrase ''aggregate amount'' to mean the total amount of an award granted to one or more whistleblowers pursuant to Proposed Rule 165.7 (Procedures for award applications and Commission award determinations). The term is relevant for purposes of determining the amount of an award pursuant to Proposed Rule 165.8 (''Amount of award;'' providing the Commission's parameters for whistleblower awards). The Commission did not receive any comments on the definition of aggregate amount. The Commission is adopting Rule 165.2(b) as proposed.

3. Analysis

Under Section 23(a)(4) of the CEA, the ''original information'' provided by a whistleblower may include information that is derived from the ''independent knowledge'' or ''independent analysis'' of a whistleblower. Proposed Rule 165.2(c) defined the term ''analysis'' to mean the whistleblower's examination and evaluation of information that may be generally available, but which reveals information that is not generally known or available to the public. The Commission received no comment on the definition of ''analysis.'' However, the Commission did receive several comments on the definition of ''independent analysis,'' which are more fully discussed in section II.B.7.a below.

Because it received no comments to the contrary, the Commission is adopting Rule 165.2(c) as proposed. This definition recognizes that there are circumstances where individuals might review publicly available information, and, through their additional evaluation and analysis, provide vital assistance to the Commission staff in understanding complex schemes and identifying potential violations of the CEA.

4. Collected by the Commission

Proposed Rule 165.2(d) defined the phrase ''collected by the Commission,'' when used in the context of deposits and credits into the Fund, to refer to a monetary sanction that is both collected by the Commission and confirmed by the U.S. Department of the Treasury.[12] Section 23(g)(3) of the CEA provides that the Fund will be financed through monetary sanctions ''collected by the Commission * * * that is not otherwise distributed to victims of a violation of this Act or the rules or regulations thereunder underlying such action,'' meaning that deposits into the Fund are based only upon what the Commission actually collects.[13] The Commission generally collects civil monetary sanctions and disgorgement amounts in civil actions, or fines in administrative actions. A federal court or the Commission may award restitution to victims in civil and administrative actions, respectively, but the Commission does not ''collect'' restitution, *i.e.*, restitution is not recorded as a receivable on the Commission's books and records. Consequently, restitution amounts collected in a covered action or related action, in normal course, will not be deposited into the Fund. The Commission did not receive comments regarding the definition of ''collected by the Commission.'' The Commission is therefore adopting Rule 165.2(d) as proposed.

5. Covered Judicial or Administrative Action

Proposed Rule 165.2(e) defined the phrase ''covered judicial or administrative action'' to mean any judicial or administrative action brought by the Commission under the CEA, the successful resolution of which results in monetary sanctions exceeding $1,000,000. The Commission did not receive any comments on ''covered judicial or administrative action,'' and is adopting Rule 165.2(e) as proposed.

6. Fund

Proposed Rule 165.2(f) defined the term ''Fund'' to mean the ''Commodity Futures Trading Commission Customer Protection Fund'' established by Section 23(g) of the CEA. The Commission will use the Fund to pay whistleblower awards as provided in Final Rule 165.12 and to finance customer education initiatives designed to help customers protect themselves against fraud and other violations of the CEA or the Commission's Regulations. The Commission received no comments regarding the definition of ''Fund.'' The Commission is adopting Rule 165.2(f) as proposed.

7. Independent Knowledge and Independent Analysis

The phrases ''independent knowledge'' and ''independent analysis'' are relevant to the definition of ''original information'' in Proposed Rule 165.2(k), which provides that ''original information'' may be derived from the ''independent knowledge'' or ''independent analysis'' of a whistleblower. Commenters generally agreed with the Commission's interpretation of independent knowledge and independent analysis.[14] However, there were varied views as to what the Commission should or should not exclude from independent knowledge and independent analysis.

a. Independent Analysis

The Commission received one comment that addressed the definition of ''independent analysis''—''the whistleblower's own analysis whether done alone or in combination with others.'' The commenter stated that the term ''independent analysis'' in Proposed Rule 165.2(h) should be

[11] *See* SEC Rule 240.21F–4(d) (providing a similar definition of ''action'').

[12] *See* discussion regarding the Fund below in section II.B.6.

[13] *See* Section 23(g)(3) of the CEA, 7 U.S.C. 26(g)(3).

[14] *See* letters from Securities Industry and Financial Markets Association and Futures Industry Association (''SIFMA/FIA''), American Institute of CPAs (''AICPA''), NSCP, American Bar Association—Business Law Section/Committee on Derivatives and Futures Law and the Committee on Federal Regulation of Securities (''ABA'') and Edison Electric Institute and National Rural Electric Cooperative Association (''EEI'').

restricted to an analysis of the whistleblower's ''independent knowledge'' along with other objective facts such as commodity price or trading volume.[15] The Commission has considered the comment in the context of ''independent analysis'' and has decided to adopt Rule 165.2(h) as proposed. Section 23(a)(4) of the CEA specifically provides that original information can be derived from either ''the independent knowledge or analysis of a whistleblower.'' The Commission's Proposed Rule adheres to this statutory limitation.

b. Independent Knowledge

i. Proposed Rule

Proposed Rule 165.2(g) defined ''independent knowledge'' as factual information in the whistleblower's possession that is not obtained from publicly available sources, which would include such sources as corporate filings, media, and the Internet. Importantly, the proposed definition of ''independent knowledge'' did not require that a whistleblower have direct, first-hand knowledge of potential violations.[16] Instead, independent knowledge may be obtained from any of the whistleblower's experiences, observations, or communications (subject to the exclusion for knowledge obtained from public sources). Thus, for example, under Proposed Rule 165.2(g), a whistleblower would have ''independent knowledge'' of information even if that knowledge derives from facts or other information that has been conveyed to the whistleblower by third parties.

Proposed Rule 165.2(g) provided six circumstances in which an individual would not be considered to have ''independent knowledge.'' The effect of those provisions would be to exclude individuals who obtain information under those circumstances from being eligible for whistleblower awards.

The first exclusion is for information generally available to the public, including corporate filings and internet based information. (Proposed Rule 165.2(g)(1).)

The second and third exclusions address information that was obtained through a communication that is subject to the attorney-client privilege. (Proposed Rule 165.2(g)(2) and (3).) The second exclusion applies when a would-be whistleblower obtains the information in question through privileged attorney-client communications. The third exclusion applies when a would-be whistleblower obtains the information in question as a result of his or his firm's legal representation of a client. Neither the second nor the third exclusion would apply in circumstances in which the disclosure of the information is authorized by the applicable federal or state attorney conduct rules. These authorized disclosures could include, for example, situations where the privilege has been waived, or where the privilege is not applicable because of a recognized exception such as the crime-fraud exception to the attorney-client privilege.

In regard to both the second and third exclusions, compliance with the CEA is promoted when individuals, corporate officers, Commission registrants and others consult with counsel about potential violations, and the attorney-client privilege furthers such consultation. This important benefit could be undermined if the whistleblower award program vitiated the public's perception of the scope of the attorney-client privilege or created monetary incentives for counsel to disclose information about potential CEA violations that they learned of through privileged communications.

The fourth exclusion to ''independent knowledge'' in the Proposed Rule applies when a person with legal, compliance, audit, supervisory, or governance responsibilities for an entity receives information about potential violations, and the information was communicated to the person with the reasonable expectation that the person would take appropriate steps to cause the entity to remedy the violation.[17] (Proposed Rule 165.2(g)(4).) Accordingly, under the fourth exclusion, officers, directors, and employees who learn of wrongdoing and are expected as part of their official duties to address the violations would not be permitted to use that knowledge to obtain a personal benefit by becoming whistleblowers.

The fifth exclusion is closely related to the fourth, and applies any other time that information is obtained from or through an entity's legal, compliance, internal audit, or similar functions or processes for identifying, reporting, and addressing potential non-compliance with applicable law. (Proposed Rule 165.2(g)(5).)

Compliance with the CEA is promoted when companies implement effective legal, internal audit, compliance, and similar functions. Thus, Section 23 should not create incentives for persons involved in such roles, as well as other similarly positioned persons who learn of wrongdoing at a company, to circumvent or undermine the proper operation of an entity's internal processes for investigating and responding to violations of law. However, both of these exclusions cease to be applicable if the entity fails to disclose the information to the Commission within sixty (60) days of when it becomes aware of the violation or otherwise proceeds in bad faith, with the result that an individual may be deemed to have ''independent knowledge,'' and, therefore, depending on the other relevant factors, may qualify for a whistleblower award. The rationale for this provision is that if the entity fails to report information concerning the violation to the Commission within that time frame, it would be inconsistent with the purposes of Section 23 to deter individuals with knowledge of the potential violations from coming forward and providing the information to the Commission. Furthermore, this provision provides a reasonable period of time for entities to report potential violations, thereby minimizing the potential of circumventing or undermining existing compliance programs.

The sixth and final exclusion to ''independent knowledge'' in the Proposed Rule applies if the would-be whistleblower obtains the information by means or in a manner that violates

[15] *See* letter from ABA.

[16] In addition, the distinction between ''independent knowledge'' (as knowledge not dependent upon publicly available sources) and direct, first-hand knowledge, is consistent with the approach courts have typically taken in interpreting similar terminology in the False Claims Act. Until this year, the ''public disclosure bar'' provisions of the False Claims Act defined an ''original source'' of information, in part, as ''an individual who [had] direct and independent knowledge of the allegations of the information on which the allegations [were] based * * *.'' 31 U.S.C. 3730(e)(4) (prior to 2010 amendments). Courts interpreting these terms generally defined ''independent knowledge'' to mean knowledge that was not dependent on public disclosures, and ''direct knowledge'' to mean first-hand knowledge from the relator's own work and experience, with no intervening agency. *E.g., United States ex rel. Fried* v. *West Independent School District,* 527 F.3d 439 (5th Cir. 2008); *United States ex rel. Paranich* v. *Sorgnard,* 396 F.3d 326 (3d Cir. 2005). *See generally* John T. Boese, *Civil False Claims and Qui Tam Actions* § 4.02[D][2] (Aspen Publishers) (2006) (citing cases). Earlier this year, Congress amended the ''public disclosure bar'' to, among other things, remove the requirement that a relator have ''direct knowledge'' of information. Sec. 10104(j)(2), Public Law 111–148 124 Stat. 901 (Mar. 23, 2010).

[17] This exclusion has been adapted from case law holding that a disclosure to a supervisor who is in a position to remedy the wrongdoing is a protected disclosure for purposes of the federal Whistleblower Protection Act, 5 U.S.C. 2302(b)(8). *E.g., Reid* v. *Merit Systems Protection Board,* 508 F.3d 674 (Fed. Cir. 2007); *Hooven-Lewis* v. *Caldera,* 249 F.3d 259 (4th Cir. 2001).

applicable federal or state criminal law. (Section 165.2(g)(6).) This exclusion is necessary to avoid the unintended effect of incentivizing criminal misconduct.

ii. Comments and Final Rule

Rule 165.2(g)(1)—Exception Concerning Public Sources

The Commission received comments from two commenters regarding the public source exception to ''independent knowledge.'' One commenter suggested that the public source exception (Section 165.2(g)(1)) is too broad and suggested that the Commission should restrict the definition of ''independent knowledge'' to first-hand knowledge. The commenter's rationale was that such a restriction would be premised on the notion that oral information obtained from third parties is unreliable because it may be insincere or subject to flaws in memory or perception. This commenter also suggested that the public source exception incentivizes whistleblower reports based on rumors or ill-informed sources.[18] Taking a contrary position, another commenter recommended that an ''independent analysis'' be allowed to draw on previously published sources.[19] One commenter suggested that ''independent analysis'' should be restricted to an analysis of the whistleblower's own ''independent knowledge'' along with other objective facts like commodity price or trading volume.[20]

After considering comments received, the Commission has decided to adopt Rule 165.2(g)(1) as proposed.

Rule 165.2(g)(2)—Exception Concerning Attorney-Client Privilege and Rule 165.2(g)(3)—Outside Counsel

One commenter asked the Commission to clarify that all of the exceptions contained in Proposed Rules 165.2(g)(2) and (3) continue to apply after an individual has resigned from his or her law firm, that the provisions apply equally to in-house and outside counsel; and that the rules treat the duties of lawyers differently from those of non-lawyer experts, such as paralegals and others who work under the direction of lawyers.[21] This commenter noted that lawyers gain knowledge about an entity that is protected by the attorney-client privilege and the work product doctrine,[22] which the lawyers are not permitted to waive, and that lawyers have state-law ethical obligations to maintain client confidentiality that extend beyond privileged information. The commenter reasoned that if the Commission does not specify that the exceptions in Rules 165.2(g)(2) and (3) continue after a lawyer has left his or her firm, the lawyer is incentivized to quit. Another commenter recommended that Rule 165.2(g)(2) be amended to explicitly apply to both attorneys and clients.[23] Similarly, another commenter suggested that the definitions of ''independent knowledge'' and ''independent analysis'' should exclude information obtained through a communication that is protected by the attorney-client privilege.[24] The same commenter recommended that the exclusions for information obtained by a person with legal, compliance, audit, supervisory, or governance responsibilities should apply to any information obtained by such persons and not be limited to information being communicated ''with a reasonable expectation that the [recipient] would take appropriate steps to cause the entity to remedy the violation. * * *'' [25]

After considering comments received, the Commission has decided to adopt Rule 165.2(g)(2) as proposed and Rule 165.2(g)(3) with some modifications. The Commission has changed ''[A]s a result of the legal representation of a client on whose behalf the whistleblower's services, or the services of the whistleblower's employer or firm, have been retained * * *'' to ''[I]n connection with the legal representation of a client on whose behalf the whistleblower, or the whistleblower's employer or firm, have been providing services. * * *'' [26] The Commission believes that these changes will prevent the use of confidential information not only by attorneys, but by secretaries, paralegals, consultants and others who work under the direction of attorneys and who may have access to confidential client information.

Rule 165.2(g)(4), (5)—Exception Concerning Internal Legal, Compliance, Audit, and Supervisory Responsibilities

Several commenters sought to expand the exclusions in Proposed Rule 165.2(g)(4). One commenter suggested that the exclusions for information obtained by a person with legal, compliance, audit, supervisory, or governance responsibilities should apply to any information obtained by such persons, and not be limited to information that was communicated to the recipient ''with a reasonable expectation that the [recipient] would take appropriate steps to cause the entity to remedy the violation * * *.'' [27] Two other commenters said that the 60-day deadline for an entity to report information to the Commission, which if missed allows a whistleblower in this category to avoid the exclusions under Proposed Rules 165.2(g)(4) and (5), did not give the entity enough time to report. One suggested the deadline should be a 'reasonable time',[28], and the other suggested that whistleblowers in this category should have to wait until an entity's internal investigation is completed before reporting to the Commission.[29] Another commenter requested that the exclusion apply to external auditors (accounting firms) who obtain information about an entity while performing a CEA-required engagement and that the exclusion applies to any engagement performed for an entity subject to the jurisdiction of the Commission whether or not the engagement is an audit.[30] A commenter also suggested that lawyers should not be subject to the ''good faith'' or ''prompt reporting'' exceptions in Proposed Rule 165.2(g)(4), and that the reference to lawyers in Proposed Rule165.2(g)(4) should therefore be deleted and treated separately in Proposed Rules 165.2(g)(2) and (3).[31]

The Commission also received a comment that stated that the exception should be broadened to include internal control functions more generally, including risk management, product management and personnel functions. This commenter reasoned that all internal control functions should be treated equally because all internal control functions play an important role in maintaining an entity's control environment.[32]

The Commission has considered the comments received and revised the rule

[18] *See* letter from ABA.

[19] *See* letter from Project on Government Oversight (''POGO'') at 5–6 (noting the Bernard Madoff whistleblower, Harry Markopolos, as an example of whistleblowers who ''perform original analysis based on publicly available sources.'').

[20] *See* letter from ABA.

[21] *See* letter from SIFMA/FIA.

[22] *See* letter from ABA.

[23] *See* letter from The Financial Services Roundtable (''FSR'').

[24] *See* letter from NSCP.

[25] *Id.*

[26] *See* Rule 165.2(g)(3).

[27] *See* letter from ABA.

[28] *See* letter from NSCP, ''as long as the firm is moving toward appropriate resolution in light of the totality of the circumstances, a subjective definition of 'reasonable time' is appropriate.''

[29] *See* letter from EEI.

[30] *See* letter from AICPA.

[31] *See* letter from SIFMA/FIA.

[32] *See* letter from SIFMA/FIA. The Commission does not agree with this commenter. To exclude all persons somehow involved in an undefined ''internal control'' function would create too broad an exclusion, thereby making an unnecessarily large number of employees ineligible to be whistleblowers. It was not the intent of Section 23 to unreasonably limit the potential pool of whistleblowers.

such that those recommendations that have been accepted, in whole or in part, are now reflected in Rule 165.2(g)(4), (5). The recommended exclusions have been revised and focused to promote the goal of ensuring that the persons most responsible for an entity's conduct and compliance with law are not incentivized to promote their own self-interest at the possible expense of the entity's ability to detect, address, and self-report violations. Further, pursuant to the rules as adopted, such individuals would be permitted to become whistleblowers under certain circumstances, including when the whistleblower has a ''reasonable basis to believe'' that: (1) Reporting to the Commission is necessary to prevent conduct likely to cause substantial injury; (2) the entity is engaging in conduct that will impede an investigation of the misconduct; or (3) at least 120 days have elapsed since the whistleblower reported the information internally.[33]

The Commission declined to revise the rule to extend the exclusion to an employee of a public accounting firm. While the SEC includes such an exclusion in its rules,[34] the SEC's Dodd-Frank Act whistleblower provisions specifically requires this exclusion [35] and external auditors are under an existing obligation to report violations to the SEC under the Securities Exchange Act of 1934.[36] Neither the Commission's Dodd-Frank Act whistleblower provisions nor the CEA have similar exclusions or requirements.

Rule 165.2(g)(6)—Exception Concerning Information Obtained in Violation of Law

Commenters support the notion that a whistleblower who reports information he obtained in violation of the law should be ineligible for an award.[37] One commenter, however, recommended that an award exclusion should be limited.[38] This commenter reasoned that Rule 165.2(g)(6), as proposed, would have the effect of making the Commission ''responsible for adjudicating—without any real due process afforded to the whistleblower—whether or not evidence-gathering techniques violated a law, and if so, whether or not the whistleblower was in fact guilty of violating said law (*i.e.* whether the state could prove, beyond [a] reasonable doubt, that the employee in fact violated each and every element of the criminal claim).'' In addition, this commenter suggested that the Commission should revise the rule to more closely reflect the underlying statutory language. Another commenter proposed that the exclusion for information obtained in violation of the law should be extended to civil violations of laws or rules, and violations of a self-regulatory organization (''SRO'') rules.[39]

After considering the comments on Proposed Rule 165.2(g)(6), the Commission has decided to adopt the rule, as proposed, with one modification. Under the Final Rule, Rule 165.2(g)(5), whether a criminal violation occurred for purposes of the exclusion is now subject to the determination of a United States court. This revision is consistent with Section 23(c)(2) of the CEA, which renders ineligible ''any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive'' a whistleblower award. Expanding this exclusion beyond criminal violations and without the requirement for a United States court determination would be inconsistent with the statute and discourage whistleblowers through the creation of legal uncertainty.

8. Information That Led to Successful Enforcement Action

a. Proposed Rule

As proposed, Rule 165.2(i) explained when the Commission would consider original information to have led to a successful enforcement action. The Proposed Rule distinguished between information regarding conduct not previously under investigation or examination and information regarding conduct already under investigation or examination.

For information regarding conduct not previously under investigation or examination, the Proposed Rule established a two-part test for determining whether the information led to successful enforcement. First, the information must have caused the Commission staff to commence an investigation or examination, reopen an investigation that had been closed, or to inquire into new and different conduct as part of an existing examination or investigation. Second, the information must have ''significantly contributed'' to the success of an enforcement action filed by the Commission.

For information regarding conduct already under investigation or examination, the Proposed Rule established a higher hurdle. To establish that information led to a successful enforcement action, a whistleblower would need to demonstrate that the information: (1) Would not have otherwise been obtained; and (2) was essential to the success of the action.

b. Comments

The Commission received two comments regarding Proposed Rule 165.2(i). Both commenters suggested revising Proposed Rule 165.2(i) to lower the hurdles to proving that a whistleblower's information led to a successful enforcement action.[40] One commenter opined that the Commission imposes additional, non-statutory hurdles to the meaning of ''led to the successful enforcement.'' This commenter also asserted that the ''significantly contributed to the success of the action'' element of the definition improperly broadens the Commission's discretion to deny awards beyond congressional intent and suggested that the ''significantly contributed'' element be stricken from the rule.[41]

c. Final Rule

The Commission has considered the comments received regarding the definition of ''information that led to successful enforcement'' and has decided to adopt Rule 165.2(i) with some changes. Although the Commission has retained the ''significantly contributed'' element of the rule, the Commission has added alternative standards to evaluate whether a whistleblower has provided original information that led to a successful enforcement action. The Commission continues to believe that it is not the intent of Section 23 to authorize whistleblower awards for any and all tips. Instead, implicit in the requirement contained in Section 23(b) that a whistleblower's information ''led to successful enforcement'' is the additional expectation that the information, because of its high quality, reliability, and specificity, has a meaningful nexus to the Commission's ability to successfully complete its investigation, and to either obtain a settlement or prevail in a litigated proceeding.

[33] *See* Rule 165.2(g)(7).

[34] *See* SEC Rule 240.21F–4(b)(4)(iii)(D).

[35] *See* 15 U.S.C. 78u–6(c)(2)(C).

[36] *See* 15 U.S.C. 78j–1(b)(3); *see also* SEC Rule 240.10A–1.

[37] *See* letter from SIFMA/FIA (''The rules should also not allow for an award based on information provided in violations of judicial or administrative orders.'').

[38] *See* letter from Taxpayers Against Fraud (''TAF'').

[39] *See* letter from SIFMA/FIA.

[40] *See* letters from The National Whistleblowers Center (''NWC'') and TAF.

[41] *See* letter from TAF.

In addition, to further incentivize internal reporting of violations, the Commission has added a new paragraph (3) to this rule, which states that original information reported through an entity's internal processes that leads to a successful enforcement action will be treated as information provided by the whistleblower instead of provided by the entity.[42]

9. Monetary Sanctions

Proposed Rule 165.2(j) defined the phrase ''monetary sanctions'' when used with respect to any judicial or administrative action, or related action, to mean: (1) Any monies, including penalties, disgorgement, restitution and interest ordered to be paid; and (2) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action. This phrase is relevant to the definition of a ''covered judicial or administrative action'' in Proposed Rule 165.2(e) and to the amount of a whistleblower award under Proposed Rule 165.8. The Commission received no comments on the definition of ''monetary sanctions.'' The Commission is adopting the rule as proposed.

10. Original Information and Original Source

a. Proposed Rules

Proposed Rule 165.2(k) tracked the definition of ''original information'' set forth in Section 23(a)(4) of the CEA.[43] ''Original information'' means information that is derived from the whistleblower's independent knowledge or analysis; is not already known to the Commission from any other source, unless the whistleblower is the original source of the information; and is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information. Consistent with Section 23(l) of the CEA, the Dodd-Frank Act authorizes the Commission to pay whistleblower awards on the basis of original information that is submitted prior to the effective date of the Final Rules implementing Section 23 (assuming that all of the other requirements for an award are met). The Dodd-Frank Act does not authorize the Commission to apply Section 23 retroactively to pay awards based upon information submitted prior to the enactment date of the statute.[44] Consistent with Congress's intent, Proposed Rule 165.2(k)(4) also required that ''original information'' be provided to the Commission for the first time after July 21, 2010 (the date of enactment of the Dodd-Frank Act).

Proposed Rule 165.2(l) defined the term ''original source,'' a term found in the definition of ''original information.'' Under the Proposed Rule, a whistleblower is an ''original source'' of the same information that the Commission obtains from another source if the other source obtained the information from the whistleblower or his representative. The whistleblower bears the burden of establishing that he is the original source of information.

In Commission investigations, a whistleblower would be an original source if he first provided information to another authority, such as the Department of Justice, an SRO, or another organization that is identified in the Proposed Rule, which then referred the information to the Commission. In these circumstances, the Proposed Rule would credit a whistleblower as being the ''original source'' of information on which the referral was based as long as the whistleblower ''voluntarily'' provided the information to the other authority within the meaning of these rules (*i.e.,* the whistleblower or his representative must have come forward and given the other authority the information before receiving any request, inquiry, or demand to which the information was relevant, or was the individual who originally possessed either the independent knowledge or conducted the independent analysis). Similarly, a whistleblower would not lose original source status solely because he shared his information with another person who filed a whistleblower claim with the Commission prior to the original source filing a claim for whistleblower status, as long as the other applicable factors are satisfied.

Proposed Rule 165.3 (''Procedures for submitting original information'') required a whistleblower to submit two forms, a Form TCR (''Tip, Complaint or Referral'') and a Form WB–APP (''Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act''), which included the ''Declaration Concerning Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act'' in order to start the process and establish the whistleblower's eligibility for award consideration.[45] A whistleblower who either provides information to another authority first, or who shares his independent knowledge or analysis with another who is also claiming to be a whistleblower, would have followed these same procedures and submitted the necessary forms to the Commission in order to perfect his status as a whistleblower under the Commission's whistleblower program. However, under Proposed Rule 165.2(l)(2), the whistleblower must have submitted the necessary forms to the Commission within 90 days after he provided the information to the other authority, or 90 days after the other person claiming to be a whistleblower submitted his claim to the Commission.

As noted above, the whistleblower must establish that he is the original source of the information provided to the other authority as well as the date of his submission, but the Commission may seek confirmation from the other authority, or any other source, in making this determination. The objective of this procedure is to provide further incentive for persons with knowledge of CEA violations to come forward (consistent with the purposes of Section 23) by assuring potential whistleblowers that they can provide information to appropriate Government or regulatory authorities, and their ''place in line'' will be protected in the event that other whistleblowers later provide the same information directly to the Commission.

For similar reasons, the Proposed Rule extended the same protection to whistleblowers who provide information about potential violations to the persons specified in Proposed Rule 165.2(g)(3) and (4) (*i.e.,* personnel involved in legal, compliance, audit, supervisory and similar functions, or who were informed about potential violations with the expectation that they would take steps to address them), and who, within 90 days, submit the necessary whistleblower forms to the Commission. Compliance with the CEA is promoted when entities have effective programs for identifying, correcting, and self-reporting unlawful conduct by their officers or employees. The objective of this provision is to support, not

[42] The SEC final rules take a similar approach to their comparable definitional provision. *See* SEC Rule 240.21F–4(c) (''information that leads to successful enforcement'').

[43] 7 U.S.C. 26(a)(4).

[44] Section 23(k) of the CEA directs that: ''Information submitted to the Commission by a whistleblower in accordance with rules or regulations implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules or regulations, provided that such information was submitted after the date of enactment of the [Dodd-Frank Act].''

[45] *See* Rule 165.3.

undermine, the effective functioning of entity compliance and related systems by allowing employees to take their concerns about potential violations to appropriate entity officials while still preserving their rights under the Commission's whistleblower program.

Proposed Rule 165.2(l)(3) addressed circumstances where the Commission already possesses some information about a matter at the time that a whistleblower provides additional information about the same matter. The whistleblower will be considered the ''original source'' of any information that is derived from his independent knowledge or independent analysis, and that materially adds to the information that the Commission already possesses. The standard is modeled on the definition of ''original source'' that Congress included in the False Claims Act through amendments.[46]

b. Comments

The Commission received three comments regarding the definition of ''original information'' in Proposed Rule 165.2(k). One commenter believes that the enumerated exclusions from the definition of ''original information'' are not sufficiently broad. As an example, this commenter posits that the definition would not clearly exclude information a whistleblower receives as a result of an investigation by an exchange, SRO, or a foreign regulator, or information received in connection with internal investigations or civil or criminal proceedings in which the information has already been made known to the entity. Therefore, this commenter suggests broadly excluding from the definition all information deriving from an allegation made in any investigative or enforcement activity or proceeding, and all information elicited during, or deriving from, any such proceeding or other matter.[47]

Another commenter had two concerns about the definition. The first concern was that a whistleblower could be rewarded for reporting something that an entity has already corrected. Therefore, the commenter proposed that for information to be considered original information, it should be ''information relating to a violation that has not been addressed by the entity that is alleged to have violated the CEA.'' The other concern was that the Proposed Rules do not specifically address original information involving violations that are time-barred by the applicable statute of limitations, or situations in which there is uncertainty regarding the applicable statute of limitations.[48]

Another commenter focused on the definition of ''original source'' and suggested that it often takes longer than 90 days for a whistleblower to realize that an entity intends to ignore the whistleblower's efforts to report under an internal compliance program. Therefore that commenter posited that the time for a whistleblower to report internally should be extended.[49]

c. Final Rules

The Commission has considered the comments received regarding the definition of ''original information'' and has decided to adopt Rule 165.2(k) as proposed. The Commission does not agree with the commenter who suggested that it would be improper for a whistleblower to receive an award for a violation that an entity has corrected. A whistleblower is entitled to an award of not less than 10 percent and not more than 30 percent of monetary sanctions collected, regardless of whether the violation was self-corrected. In addition, the Commission does not believe it is necessary or appropriate to limit the definition of original information based upon the age of the information.

The Commission has considered the comments received regarding ''original source'' and has decided to adopt Rule 165.2(l) with a change. The change is that the Commission has extended the time that an otherwise excluded whistleblower has to report information to the Commission after he reported to an entity that did not self report. Paragraph (2) of Rule 165.2(l) now gives such whistleblower 120 days instead of 90 days to regain ''original source'' status, which will provide whistleblowers with additional time to recognize whether an entity has reported the violation to the Commission.

The Commission believes that several provisions in the Final Rules will ordinarily operate to exclude whistleblowers whose only source of original information is an existing investigation or proceeding. Information that is exclusively derived from a governmental investigation is expressly excluded from the definition of ''original information'' under Rule 165.2(k)(3). A whistleblower who learns about possible violations only through a company's internal investigation will ordinarily be excluded from claiming ''independent knowledge'' by operation of either the exclusions from ''independent knowledge'' set forth in Rule 165.2(g)(2), (3), (4), (5) (relating to attorneys and other persons who may be involved in the conduct of internal investigations). To the extent that information about an investigation or proceeding is publicly available, it is excluded from consideration as ''independent knowledge'' under Rule 165.2(g)(1).

11. Related Action

The phrase ''related action'' in Proposed Rule 165.2(m), when used with respect to any judicial or administrative action brought by the Commission under the CEA, means any judicial or administrative action brought by an entity listed in Proposed Rule 165.11(a) (*i.e.,* the Department of Justice, an appropriate department/agency of the Federal Government, a registered entity, registered futures association or SRO, or a State criminal or appropriate civil agency) that is based upon the original information voluntarily submitted by a whistleblower to the Commission pursuant to Proposed Rule 165.3 that led to the successful resolution of the Commission action. This phrase is relevant to the Commission's determination of the amount of a whistleblower award under Proposed Rules 165.8 and 165.11. The Commission received one comment regarding ''related action.'' The commenter expressed concern that a whistleblower could potentially receive an award from both the Commission and the SEC by providing the same information to each agency. This same commenter noted that the SEC will not make an award for a related action and these rules should contain similar provisions.[50] After consideration of the comment, the Commission has decided to adopt the rule as proposed. There are statutory differences between Section 23(h)(2)(C) of the CEA and Section 21F(h)(2)(D)(i) of the Securities Exchange Act of 1934 that prevent complete harmonization between the two agencies with regard to the term ''related action.'' For example, the list entities whose actions can qualify as ''related actions'' do not match under the Commission and SEC Dodd-Frank Act provisions. Compare 7 U.S.C. 26(a)(5) (designating the Department of Justice, an appropriate department/agency of the Federal Government, a registered entity, registered futures association or SRO, a State criminal or appropriate civil agency, and a foreign futures authority); with 15 U.S.C. 78u–6(a)(5) (designating) the Attorney General of the United States, an

[46] 31 U.S.C. 3730(e)(4)(B), Public Law 111–148 § 10104(j)(2), 124 Stat. 901 (Mar. 23. 2010).

[47] *See* letter from ABA.

[48] *See* letter from Investment Company Institute (''ICI'').

[49] *See* letter from TAF.

[50] *See* letter from FSR.

appropriate regulatory agency, an SRO, or a state attorney general in a criminal case).

12. Successful Resolution or Successful Enforcement

Proposed Rule 165.2(n) defined the phrase ''successful resolution,'' when used with respect to any judicial or administrative action brought by the Commission under the CEA, to include any settlement of such action or final judgment in favor of the Commission. The phrase shall also have the same meaning as ''successful enforcement.'' This phrase is relevant to the definition of the term ''covered judicial or administrative action'' as set forth in Rule 165.2(e). The Commission received no comments on the term ''successful resolution'' or ''successful enforcement'' and is adopting the rule as proposed.

13. Voluntary Submission or Voluntarily Submitted

a. Proposed Rule

Under Section 23(b)(1) of the CEA,[51] whistleblowers are eligible for awards only when they ''voluntarily'' provide original information about CEA violations to the Commission. Proposed Rule 165.2(o) defined a submission as made ''voluntarily'' if a whistleblower provided the Commission with information before receiving any request, inquiry, or demand from the Commission, Congress, any other federal, state or local authority, the Department of Justice, a registered entity, a registered futures association or any SRO about a matter to which the information in the whistleblower's submission was relevant. The Proposed Rule covered both formal and informal requests. Thus, under the Proposed Rule, a whistleblower's submission would not be considered ''voluntary'' if the whistleblower was contacted by the Commission or one of the other authorities first, whether or not the whistleblower's response was compelled by subpoena or other applicable law.

As the Commission's Proposing Release explained, this approach was intended to create a strong incentive for whistleblowers to come forward early with information about possible violations of the CEA, rather than wait to be approached by investigators. For the same reasons, Proposed Rule 165.2(o) provided that a whistleblower's submission of documents or information would not be deemed ''voluntary'' if the documents or information were within the scope of a prior request, inquiry, or demand to the whistleblower's employer, unless the employer failed to make production to the requesting authority in a timely manner.

Proposed Rule 165.2(o) also provided that a submission would not be considered ''voluntary'' if the whistleblower was under a pre-existing legal or contractual duty to report the violations of the CEA to the Commission or to one of the other designated authorities.

b. Comments

Commenters had diverse perspectives on the Commission's proposal to require that whistleblowers come forward before they receive either a formal or informal request or demand from the Commission, or one of the other designated authorities, about any matter relevant to their submission. Some commenters asserted that the Commission's Proposed Rule was too restrictive. For example, one commenter urged that all information provided by a whistleblower should be treated as ''voluntary'' until the whistleblower is testifying under compulsion of a subpoena.[52] Another commenter expressed concern that the Commission's Proposed Rule could have the effect of barring whistleblowers in cases in which a whistleblower's information is arguably ''relevant'' to a general informational request from an authority, even though the authority is not pursuing the issue that the whistleblower might report.[53] This commenter also suggested that rather than create an exclusion based on whether the information is ''relevant'' to a request, Rule 165.2(o) should be revised to bar individuals whose allegations are the subject of investigation by the public entities identified in the rule.[54]

Other commenters posited that the Commission's Proposed Rule did not go far enough in precluding whistleblower submissions from being treated as ''voluntary.'' A commenter urged that the Commission's rules should preclude an individual from making a ''voluntary'' submission after an individual has been contacted for information during the course of an entity's internal investigation or internal review.[55] In response to one specific request for comment, other commenters advocated that the Commission not treat a submission as ''voluntary'' if the whistleblower was aware of a governmental or internal investigation at the time of the submission, whether or not the whistleblower received a request from the Commission or one of the other authorities.[56]

The Commission also requested comment regarding whether a whistleblower's submission should be deemed to be ''voluntary'' if the information submitted was within the scope of a previous request to the whistleblower's employer. Some commenters responded that they supported the exclusion and suggested that it be expanded in various ways.[57]

The Commission received varying comments regarding its Proposed Rule to exclude whistleblowers from the definition of ''voluntarily'' if they are under a pre-existing legal or contractual duty to report the violations to the Commission or another authority. Some commenters opposed the exclusion on the ground that Section 23(c)(2) of the CEA sets forth a specific list of persons whom Congress deemed to be ineligible for awards, some as a result of their pre-existing duties.[58] These commenters suggested that the Commission was expanding these exclusions in a manner that was inconsistent with Congressional intent and the purposes of Section 23.[59]

Other commenters favored the ''legal duty'' exclusion and recommended that it be clarified and extended. In particular, these commenters suggested that the exclusion should be applied to

[51] 7 U.S.C. 26(b)(1).

[52] *See* letter from NWC.

[53] *See* letter from TAF. As an example, this commenter posits that:

[A] request by a public employee pension fund for basic information concerning Forex currency trades on its account could preclude a ''voluntary'' submission of whistleblower allegations that the Forex currency broker engaged in large-scale mischarging, even if those allegations were not publicly known. In this instance the information requested is ''relevant'' to the whistleblower's allegations, even if the requesting agency is completely unaware of those allegations.

[54] *Id.*

[55] *See* letter from SIFMA/FIA.

[56] *See* letters from ABA and NSCP.

[57] *See* letters from SIFMA/FIA (urging elimination of the exception that would permit an employee to make a voluntary submission if the employer did not produce the documents or information in a timely manner) and NSCP (employee should be regarded as having received a request to an employer if there is a reasonable likelihood that the employee would have been contacted by the employer in responding to the request).

[58] Section 23(c)(2) of the CEA sets forth four categories of individuals who are ineligible for whistleblower awards. These include: employees of the Commission and of certain other authorities; persons who were convicted of a criminal violation in relation to the action for which they would otherwise be eligible for an award; persons who submit information to the Commission that is based on the facts underlying the covered action submitted previously by another whistleblower; and any whistleblower who fails to submit information to the Commission in such form as the Commission may require by rule or regulation.

[59] *See* letters from NWC; Stuart D. Meissner, LLC; National Coordinating Committee for Multiemployer Plans (''NCCMP''); DC Bar; and Daniel J. Hurson.

various categories of individuals in the corporate context. Several commenters urged that the Commission should not consider submissions to be ''voluntary'' in circumstances in which an employee or an outside service provider has a duty to report misconduct to an entity.[60]

c. Final Rule

After considering the comments, the Commission has decided to adopt Rule 165.2(o) without modifications. The Commission believes that a requirement that a whistleblower come forward before being contacted by Government investigations is both good policy and consistent with existing case law.[61]

As adopted, Final Rule 165.2(o) provides that a submission of original information is deemed to have been made ''voluntarily'' if the whistleblower makes his or her submission before a request, inquiry, or demand that relates to the subject matter of the submission is directed to the whistleblower or anyone representing the whistleblower (such as an attorney): (i) By the Commission; (ii) Congress; (iii) any other federal or state authority; (iv) the Department of Justice; (v) a registered entity; (vi) a registered futures association; or (vii) an SRO.

The Commission believes that a whistleblower award should not be available to an individual who makes a submission after first being questioned about a matter (or otherwise requested to provide information) by Commission staff acting pursuant to any of its investigative or regulatory authorities. Only an investigative request made by one of the other designated authorities will trigger application of the rule, except that a request made in connection with an examination or inspection, as well as an investigative request, by an SRO will also render a whistleblower's subsequent submission relating to the same subject matter not ''voluntary.'' In the context of a request made to an employer, an employee-whistleblower will be considered to have received a request if the documents or information the whistleblower provides to the Commission are within the scope of the request to the employer. This provision recognizes the important relationship that frequently exists between examinations and enforcement investigations, as well as the Commission's regulatory oversight of SROs. For example, if an entity's employee were interviewed by examiners, the employee could not later make a ''voluntary'' submission related to the subject matter of the interview.[62]

As adopted, the Commission's rule retains the provision that a submission will not be considered ''voluntary'' if the whistleblower is under a pre-existing legal or contractual duty to report the information to the Commission or to any of the other authorities designated in the rule. As adopted, Rule 165.2(o) provides that a whistleblower cannot ''voluntarily'' submit information if the whistleblower is required to report his ''original information'' to the Commission pursuant to a pre-existing legal duty, a contractual duty that is owed to the Commission or to one of the other authorities set forth above, or a duty that arises out of a judicial or administrative order.

For similar reasons, the Commission declines to accept the suggestion of some commenters that a whistleblower report should not be treated as ''voluntary'' if it was made after the whistleblower had been contacted for information in the course of an internal investigation. Elsewhere in the Commission's final Rules, the Commission has attempted to create strong incentives for employees to continue to utilize their employers' internal compliance and other processes for receiving and addressing reports of possible violations of law.[63] If a whistleblower took any steps to undermine the integrity of such systems or processes, the Commission will consider that conduct as a factor that may decrease the amount of any award.[64] However, a principal purpose of Section 23 is to promote effective enforcement of the commodity laws by providing incentives for persons with knowledge of misconduct to come forward and share their information with the Commission. Although the Commission acknowledges that internal investigations can be an important component of corporate compliance, and although there are existing incentives for companies to self-report violations, providing information to persons conducting an internal investigation, or simply being contacted by them, may not, without more, achieve the statutory purpose of getting high-quality, original information about violations of the CEA directly to Commission staff.

14. Whistleblower(s)

a. Proposed Rule

The term ''whistleblower'' is defined in Section 23(a)(7) of the CEA.[65] Consistent with this language, Proposed Rule 165.2(p) defined a whistleblower as an individual who, alone or jointly with others, provides information to the Commission relating to a potential violation of the CEA. An entity or other non-natural person is not eligible to receive a whistleblower award. This definition tracks the statutory definition of a ''whistleblower,'' except that the Proposed Rule uses the term ''potential violation'' in order to make clear that the whistleblower anti-retaliation protections set forth in Section 23(h) of the CEA do not depend on an ultimate adjudication, finding or conclusion that conduct identified by the whistleblower constituted a violation of the CEA.

Further, Proposed Rule 165.2(p) (and Proposed Rule 165.6(b)) would make clear that the anti-retaliation protections set forth in Section 23(h) of the CEA apply irrespective of whether a whistleblower satisfies all the procedures and conditions to qualify for an award under the Commission's whistleblower program. Section 23(h)(1)(A) of the CEA prohibits employment retaliation against a whistleblower who provides information to the Commission (i) ''in accordance with this section,'' or (ii) ''in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.'' The Commission interprets the statute as designed to extend the protections against employment retaliation delineated in Section 23(h)(1) to any individual who provides information to the Commission about potential violations of the CEA regardless of whether the person satisfies procedures and conditions necessary to qualify for an award under the Commission's whistleblower program.

b. Comments

The Commission received several comments regarding the definition of whistleblower. Two commenters urged

[60] *See* letters from NSCP and FSR.

[61] *Cf. Barth* v. *Ridgedale Electric, Inc.,* 44 F.3d 699 (8th Cir. 1994); *United States ex rel. Paranich* v. *Sorgnard,* 396 F.3d 326 (3d Cir. 2005) (rejecting argument that information provided beyond that required by subpoena is voluntary for purposes of False Claims Act); *United States ex rel. Fine* v. *Chevron, USA, Inc.,* 72 F.3d 740 (9th Cir. 1995), *cert. denied,* 517 U.S. 1233 (1996) (rejecting argument that provision of information to the Government is always voluntary unless compelled by subpoena).

[62] As is further discussed below, individuals who wait to make their submission until after a request is directed to their employer will not face an easy path to an award. The Commission expects to scrutinize all of the attendant circumstances carefully in determining whether such submissions ''significantly contributed'' to a successful enforcement action under Rule 165.2(n) in view of the previous request to the employer on the same or related subject matter.

[63] *See* discussion below in Part II.I.

[64] *See* Rule 165.9.

[65] 7 U.S.C. 26(a)(7).

that the term whistleblower should include only individuals who provide information about potential violations of the commodities laws ''by another person.'' [66] The Commission also received several comments regarding the anti-retaliation provision of the definition. One commenter asserted that the anti-retaliation provisions of Proposed Rules 165.2(p) and 165.6(b) could be interpreted to protect individuals who have violated criminal laws, and urged that the Commission clarify that companies are permitted ''to take adverse personnel actions against whistleblowers for any appropriate reason other than their whistleblower status.'' This same commenter suggested that the rules also should be clarified to state that filing a whistleblower report does not protect an individual from discipline or termination if the individual was involved in, was responsible for, or lied about the misconduct described in the report.[67]

Another commenter was concerned about the potential for abuse by employees who might make frivolous whistleblower claims solely to avail themselves of the anti-retaliation provisions of Part 165 or to seek a chance to receive a potentially large award. This commenter believed that the Commission should impose additional requirements on persons entitled to whistleblower status and suggested that Proposed Rule 165.2(p) be revised to specify that the anti-retaliation provision apply to a person who provides information: That is material to the claimed violation of the CEA; that has a basis in fact or knowledge (which must be articulated) rather than speculation; that is not based on information that is either publicly disseminated or which the employee should reasonably know is already known to the entity's board of directors or chief compliance officer, or to a court or the Commission or another governmental entity; and the provision of which does not result in the violation of a professional obligation, including the obligation to maintain such information in confidence. This commenter also suggested that the Commission deliver to an employee who has met the requisite criteria of a ''whistleblower'' a letter or statement indicating such status by reason of the information the employee provided.[68] This commenter also contended that the information regarding ''a potential violation'' language in Proposed Rule 165.2(p) could be read to refer to future acts or omissions. As a result, the commenter encouraged the Commission to use ''another phrase (such as 'claimed violation') and to add a definition of the term to further minimize the ambiguity.'' The commenter posited that the definition of the term should be further clarified to indicate that it does not include matters that are clearly stale (*e.g.,* an alleged violation that occurred ten years ago). Two other commenters recommended that the rule exclude any individuals who engaged in the underlying misconduct from eligibility as a whistleblower.[69] One commenter supported anti-retaliation protection of whistleblowers even if they do not qualify for an award.[70] Another commenter suggested that the Commission should find that any entity that retaliates against a whistleblower commits ''a separate and independent violation'' of the commodity futures laws subjecting the entity to the maximum penalties for such violation provided for under the law, up to and including a delisting of the entity.[71]

c. Final Rule

Upon consideration of the comments received, the Commission has decided to adopt Rule 165.2(p) as proposed. The anti-retaliation provisions reflect Congress's intent to implement anti-retaliation protections for whistleblowers who provide original information to the Commission. These anti-retaliation protections do not provide blanket immunity to whistleblowers from adverse employment actions by their employers; whistleblowers are protected only to the extent that the employer took the adverse employment action because ''of any lawful act done by the whistleblower'' in providing information to the Commission or in assisting the Commission in any related investigation or enforcement action.[72] With respect to the commenter concern regarding potential bad faith reporting, Congress placed a procedural safeguard in the statute that advises whistleblowers that they can be prosecuted for making false statements to the Commission under 18 U.S.C. 1001.[73] This procedural safeguard will reduce the risk of meritless referrals. Moreover, whistleblowers are incentivized to provide referrals only if they believe those referrals have merit since they can only get an award if their referral leads to a successful enforcement action (see Rules 165.2(i) and 165.9.). Also as indicated above, several commenters addressed issues relating to eligibility and culpability of a whistleblower. Those issues are addressed in Rules 165.6 and 165.17, respectively.

The Commission does not have the statutory authority to conclude that any entity that retaliates against a whistleblower commits a separate and independent violation of the CEA. Section 23(h)(1)(B)(i) clearly states that only an individual who alleges retaliation in violation of being a whistleblower may bring such a cause of action.

Regarding Rule 165.2(p)(2), the Commission has made a slight modification. Pursuant to the change, in order to be considered a whistleblower for purposes of the anti-retaliation protections afforded by Section 23(h)(1)(A)(i) of the CEA, the whistleblower must possess a reasonable belief that the information the whistleblower provides relates to a possible violation of the CEA.

C. Rule 165.3—Procedures for Submitting Original Information

1. Proposed Rule

The Commission proposed a two-step process for the submission of original information under the whistleblower award program. In general, the first step would require the submission of the standard form on which the information concerning potential violations of the CEA are reported. The second step would require the whistleblower to complete a unique form, signed under penalties of perjury (consistent with Section 23(m) of the CEA), in which the whistleblower would be required to make certain representations concerning the veracity of the information provided and the whistleblower's eligibility for a potential award. The use of standardized forms will greatly assist the Commission in managing and tracking numerous tips from potential whistleblowers. Forms will also better enable the Commission to find common threads among tips and otherwise make better use of the information provided, and assist with the review of requests for payment under the whistleblower provisions. The purpose of requiring a sworn declaration is to help deter the

[66] *See* letters from SIFMA/FIA and ABA.

[67] *See* letter from SIFMA/FIA.

[68] *See* letter from ABA.

[69] *See* letters from Association of Corporate Counsel (''ACC'') and FSR.

[70] *See* letter from POGO.

[71] *See* letter from NCCMP.

[72] 7 U.S.C. 26(h)(1)(A).

[73] *See* Section 23(m) of the CEA, 7 U.S.C. 26(m). Such false statements also could be a violation of Section 9(a)(3) of the CEA, 7 U.S.C. 13(a)(3), and could potentially be a violation of Section 6(c)(2) of the CEA, 7 U.S.C. 9, 15. Therefore, a whistleblower who provides information to the Commission in violation of these sections would not be entitled to retaliation protection because his provision of information to the Commission would be in violation of law. *See* 7 U.S.C. 26(h)(1)(A).

submission of false and misleading tips and the resulting inefficient use of the Commission's resources. The requirement would also mitigate the potential harm to companies and individuals resulting from false or spurious allegations of wrongdoing.

As set forth in Proposed Rule 165.5, Commission staff may also request testimony and additional information from a whistleblower relating to the whistleblower's eligibility for an award.

a. Form TCR and Instructions

Subparagraph (a) of Proposed Rule 165.3 required the submission of information to the Commission on proposed Form TCR. The Form TCR, ''Tip, Complaint or Referral,'' and the instructions thereto, were designed to capture basic identifying information about a complainant and to elicit sufficient information to determine whether the conduct alleged suggests a violation of the CEA.

b. Form WB–DEC and Instructions

In addition to Form TCR, the Commission proposed in subparagraph (b) of Proposed Rule 165.3 to require that whistleblowers who wish to be considered for an award in connection with the information they provide to the Commission also complete and provide the Commission with proposed Form WB–DEC, ''Declaration Concerning Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act.'' Proposed Form WB–DEC would require a whistleblower to answer certain threshold questions concerning the whistleblower's eligibility to receive an award. The form also would contain a statement from the whistleblower acknowledging that the information contained in the Form WB–DEC, as well as all information contained in the whistleblower's Form TCR, is true, correct and complete to the best of the whistleblower's knowledge, information and belief. Moreover, the statement would acknowledge the whistleblower's understanding that the whistleblower may be subject to prosecution and ineligible for an award if, in the whistleblower's submission of information, other dealings with the Commission, or dealings with another authority in connection with a related action, the whistleblower knowingly and willfully made any false, fictitious, or fraudulent statements or representations, or used any false writing or document knowing that the writing or document contained any false, fictitious, or fraudulent statement or entry.

In instances where information is provided by an anonymous whistleblower, proposed subparagraph (c) of Proposed Rule 165.3 required that the whistleblower's identity must be disclosed to the Commission and verified in a form and manner acceptable to the Commission consistent with the procedure set forth in Proposed Rule 165.7(c) prior to the Commission's payment of any award.

The Commission proposed to allow two alternative methods of submission of Form TCRs and WB–DEC. A whistleblower would have the option of submitting a Form TCR electronically through the Commission's Web site, or by mailing or faxing the form to the Commission. Similarly, a Form WB–DEC could be submitted electronically, in accordance with instructions set forth on the Commission's Web site or, alternatively, by mailing or faxing the form to the Commission.

c. Perfecting Whistleblower Status for Submissions Made Before Effectiveness of the Rules

As previously discussed, Section 748(k) of the Dodd-Frank Act stated that information submitted to the Commission by a whistleblower after the date of enactment, but before the effective date of the Proposed Rules, retained the status of original information. The Commission has already received tips from potential whistleblowers after the date of enactment of the Dodd-Frank Act. Proposed Rule 165.3(d) provided a mechanism by which whistleblowers who fall into this category could perfect their status as whistleblowers once the Final Rules are adopted. Subparagraph (d)(1) required a whistleblower who provided original information to the Commission in a format or manner other than a Form TCR to submit a completed Form TCR within one hundred twenty (120) days of the effective date of the Final Rules and to otherwise follow the procedures set forth in subparagraphs (a) and (b) of Proposed Rule 165.3. If a whistleblower provided the original information to the Commission in a Form TCR, subparagraph (d)(2) would require the whistleblower to submit Form WB–DEC within one hundred twenty (120) days of the effective date of the Final Rules in the manner set forth in subparagraph (b) of Proposed Rule 165.3.

2. Comments

The Commission received several comments regarding Proposed Rule 165.3. A commenter advised the Commission that the rules as currently proposed are not ''user friendly'' and modifications must be made to both procedures and forms to facilitate disclosures, and to do so would minimize the risks that otherwise qualified applicants will be denied based on a technicality.[74] Several commenters referenced Proposed Rule 165.3 while advocating internal reporting.[75] They suggested that a whistleblower who reports internally prior to reporting to the Commission should be given one year to file an application; and that 90 days to file Forms TCR and WB–DEC may not be sufficient time for a firm to assess a complex situation, and, therefore, the deadline should be a minimum of 90 days or such longer time as is reasonable.

Another commenter suggested that, if documents are delivered directly to the Commission, then the representations on a Form TCR should be subject to penalty of perjury, similar to Form WB–DEC. This commenter also suggested that attorneys who assist clients in submitting anonymous claims should be required to review the client's information and certify to the Commission that the client can show ''particularized facts suggesting a reasonable probability that a violation has actually occurred or is occurring.'' This Commenter also stated that the 90-day deadline should be eliminated, but that if it is not eliminated the deadline should be at least 180 days.[76]

3. Final Rule

After consideration of the comments received on Proposed Rule 165.3, the Commission has decided to adopt the rule with changes. In response to comments calling for the streamlining of process, and in the interest of harmonization with the SEC, the Commission has incorporated the substance of Form WB–DEC into both the Form TCR and WB–APP.[77] The forms will be changed to advise potential whistleblowers (and their attorneys) that the forms must be completed under oath and subject to the penalty of perjury. Also, changes have been made to Rule 165.3 regarding the incorporation of the WB–DEC form into both the Form-TCR and Form WB–APP.

D. Rule 165.4—Confidentiality

1. Proposed Rule

Proposed Rule 165.4 summarized the confidentiality requirements set forth in Section 23(h)(2) of the CEA[78] with

[74] *See* letter from NWC.

[75] *See* letters from NSCP, ABA, and NCCMP.

[76] *See* letter from ABA.

[77] Form WB–APP and the award application process are discussed below in section II.G.

[78] 7 U.S.C. 26(h)(2).

respect to information that could reasonably be expected to reveal the identity of a whistleblower. As a general matter, it is the Commission's policy and practice to treat all information obtained during its investigations as confidential and nonpublic. Disclosures of enforcement-related information to any person outside the Commission may only be made as authorized by the Commission and in accordance with applicable laws and regulations. Consistent with Section 23(h)(2), the Proposed Rule explains that the Commission will not reveal the identity of a whistleblower or disclose other information that could reasonably be expected to reveal the identity of a whistleblower, except under circumstances described in the statute and the rule.[79] As is further explained below, there may be circumstances in which disclosure of information that identifies a whistleblower will be legally required or will be necessary for the protection of market participants.

Subparagraph (a)(1) of the Proposed Rule authorized disclosure of information that could reasonably be expected to reveal the identity of a whistleblower when disclosure is required to a defendant or respondent in a public proceeding that the Commission files, or in another public action or proceeding filed by an authority to which the Commission is authorized to provide the information. For example, in a related action brought as a criminal prosecution by the Department of Justice, disclosure of a whistleblower's identity may be required in light of a criminal defendant's constitutional right to be confronted by the witnesses against him.[80] Subparagraph (a)(2) would authorize disclosure to: The Department of Justice; another appropriate department or agency of the Federal Government acting within the scope of its jurisdiction; a registered entity, registered futures association, or SRO; a state attorney general in connection with a criminal investigation; any appropriate state department or agency acting within the scope of its jurisdiction; or a foreign futures authority.

Because many whistleblowers may wish to provide information anonymously, subparagraph (b) of the Proposed Rule, consistent with Section 23(d) of the CEA, states that anonymous submissions are permitted with certain specified conditions. Subparagraph (b) would require that anonymous whistleblowers who submit information to the Commission must follow the procedure in Proposed Rule 165.3(c) for submitting original information anonymously. Further, anonymous whistleblowers would be required to follow the procedures set forth in Proposed Rule 165.7(c) requiring that the whistleblower's identity be disclosed to the Commission and verified in a form and manner acceptable to the Commission prior to the Commission's payment of any award.

The purpose of this requirement is to prevent fraudulent submissions and facilitate communication and assistance between the whistleblower and the Commission's staff. A whistleblower may be represented by counsel—whether submitting information anonymously or not.[81] The Commission emphasizes that anonymous whistleblowers have the same rights and responsibilities as other whistleblowers under Section 23 of the CEA and the Final Rules, unless expressly exempted.

2. Comments

The Commission received one comment regarding Proposed Rule 165.4. The commenter stated that the Commission has no authority to compel an attorney to reveal the identity of an anonymous whistleblower, and that, in cases where the Commission knows the whistleblower's identity, the rules should require the Commission to notify the whistleblower, and provide the whistleblower an opportunity to seek a protective order, whenever the whistleblower's identity may be subject to disclosure.[82]

3. Final Rule

The Commission is adopting Rule 165.4 as proposed. The rule tracks the provisions of the statute and identifies those instances where the Commission, in furtherance of its regulatory responsibilities, may provide information to certain delineated recipients.

The Commission plans to work closely with whistleblowers, and their attorneys if they are represented, in an effort to take appropriate steps to maintain their confidentiality, consistent with the requirements of Section 23(h)(2).[83] At the same time, however, Congress expressly authorized the Commission to disclose whistleblower-identifying information subject to the limitations and conditions set forth in Section 23(h)(2)(C) of the CEA. Accordingly, the Commission does not believe it would be consistent with either Congress's intent or the proper exercise of the Commission's enforcement responsibilities to require by rule that Commission staff notify a whistleblower prior to any authorized disclosure, and provide the whistleblower with an opportunity to seek a protective order.

E. Rule 165.5—Prerequisites to the Consideration of an Award

1. Proposed Rule

Proposed Rule 165.5 summarized the general prerequisites for whistleblowers to be considered for the payment of awards set forth in Section 23(b)(1) of the CEA. As set forth in the statute, subparagraph (a) states that, subject to the eligibility requirements in the Regulations, the Commission will pay an award or awards to one or more whistleblowers who voluntarily provide the Commission with original information that led to the successful resolution of a covered Commission judicial or administrative action or the successful enforcement of a related action by: the Department of Justice; an appropriate department or agency of the Federal Government acting within the scope of its jurisdiction; a registered entity, registered futures association or SRO; a state attorney general in connection with a criminal investigation; any appropriate state department or agency acting within the scope of its jurisdiction; or a foreign futures authority.

Subparagraph (b) of Proposed Rule 165.5 emphasizes that, in order to be eligible, the whistleblower must have submitted to the Commission original information in the form and manner required by Proposed Rule 165.3. The whistleblower must also provide the Commission, upon its staff's request, certain additional information, including: explanations and other assistance, in the manner and form that staff may request, so that the staff may evaluate the use of the information

[79] Section 23(h)(2)(A) provides that the Commission shall not disclose any information, including that provided by the whistleblower to the Commission, which could reasonably be expected to reveal the identity of the whistleblower, except in accordance with the provisions of Section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or governmental organizations described in subparagraph (C).

[80] *See* U.S. Const. Amend. VI.

[81] *See* 7 U.S.C. 26(d)(1). Under the statute, however, an anonymous whistleblower seeking an award is required to be represented by counsel. 7 U.S.C. 26(d)(2).

[82] *See* letter from NWC.

[83] For example, the Commission is adding a question to our whistleblower submission form that asks whistleblowers to tell us if they are giving us any particular documents or other information in their submission that they believe could reasonably be expected to reveal their identity.

submitted; all additional information in the whistleblower's possession that is related to the subject matter of the whistleblower's submission; and testimony or other evidence acceptable to the staff relating to the whistleblower's eligibility for an award. Subparagraph (b) of Proposed Rule 165.5 further requires that, to be eligible for an award, a whistleblower must, if requested by Commission staff, enter into a confidentiality agreement in a form acceptable to the Commission, including a provision that a violation of the confidentiality agreement may lead to the whistleblower's ineligibility to receive an award.

2. Comments

The Commission received comment on Proposed Rule 165.5 from one commenter.[84] This commenter argued that the Dodd-Frank Act does not require or authorize a rule that requires a whistleblower to sign a confidentiality or non-disclosure agreement. This commenter reasoned that if a whistleblower files a claim and refuses to sign such an agreement it could impact the Commission's willingness to share information with the whistleblower during the investigation, or even to go forward with an enforcement action. Also, this commenter suggested that a whistleblower should be able to object to the actions of the Commission if the whistleblower believes the Commission is improperly handling an investigation, without fear of being disqualified from an award. Finally, this commenter argued that a whistleblower should not be required to sign a confidentiality agreement in case the whistleblower has clients who need to know about the whistleblower's underlying concerns. For example, if a whistleblower had clients that had funds in a company operating a Ponzi scheme, it would not be beneficial to the clients for the whistleblower to not tell the clients about the scheme.

3. Final Rule

After considering these comments, the Commission is adopting the rule as proposed. The rule tracks and summarizes the general prerequisites for a whistleblower to be considered for an award under Section 23(b)(1) of the CEA. In addition, the Commission does not share information regarding investigations or enforcement actions with individuals who provide tips.[85] Requiring a whistleblower to sign a confidentiality agreement will serve to ensure that the entity being investigated is not made aware of the investigation prematurely. The Commission also has discretion in how it handles investigations and enforcement actions.[86]

F. Rule 165.6—Whistleblowers Ineligible for an Award

1. Proposed Rule

Subparagraph (a) of Proposed Rule 165.6 specified the categories of individuals who are statutorily ineligible for an award under Section 23 of the CEA. These include persons who are, or were at the time they acquired the original information, a member, officer, or employee of: The Commission; the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Board of Directors of the Federal Deposit Insurance Corporation; the Director of the Office of Thrift Supervision; the National Credit Union Administration Board; the SEC; the Department of Justice; a registered entity; a registered futures association; an SRO; or a law enforcement organization. Further, Proposed Rule 165.6(a)(2) made clear that no award will be made to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under Proposed Rule 165.7.

In order to prevent evasion of these exclusions, subparagraph (a)(4) of the Proposed Rule also provided that persons who acquire information from ineligible individuals are ineligible for an award. Consistent with Section 23(m) of the CEA, a whistleblower is ineligible if in his submission of information or application for an award, in his other dealings with the Commission, or in his dealings with another authority in connection with a related action he: Knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or uses any false writing or document, knowing that it contains any false, fictitious, or fraudulent statement or entry; or omits any material fact the absence of which would make any other statement or representation made to the Commission or any other authority misleading.

Subparagraph (b) of Proposed Rule 165.6 reiterated that a determination that a whistleblower is ineligible to receive an award for any reason does not deprive the individual of the anti-retaliation protections set forth in Section 23(h)(1) of the CEA.

2. Comments

The Commission has received comments recommending that the Commission expand the list of persons ineligible to receive an award to individuals who fail to first report violations internally before reporting violations to the Commission.[87] Some commenters have suggested that the only exception to a requirement of mandatory internal reporting for award eligibility should be when the whistleblower can prove that the employer's internal compliance system is inadequate.[88] One commenter proposed that for an employer's internal compliance system to be effective it would have to provide for: (1) A complaint-reporting hotline; (2) a designated officer (such as the chief compliance officer), who is responsible for overseeing investigations of complaints, and who has access to senior executive officers with authority to respond to well-founded complaints; and (3) protection to an individual against retaliation for submitting a complaint.[89] Another commenter similarly suggests that a whistleblower who fails to report internally should only be eligible to receive an award if he can demonstrate that the company's internal reporting program fails to comply with a federal standard (if applicable) or is inadequate (if there is no Federal standard).[90] This commenter further suggests that the Commission should afford an entity a reasonable opportunity (of at least 180 days) to address the alleged violation.[91]

Commenters also suggest that a whistleblower who prematurely reports to the Commission be eligible for an award, but only at the lower end of the permissible range.[92] Commenters also urge the Commission to deem ineligible for a whistleblower award individuals who: (1) Violate entity rules requiring that misconduct be reported internally; (2) falsely certify that they are not aware

[84] *See* letter from NWC.

[85] *See, e.g.,* Rule 11.3, 17 CFR 11.3 (2011) (providing, in general, that ''[a]ll information and documents obtained during the course of an investigation, whether or not obtained pursuant to subpoena, and all investigative proceedings shall be treated as non-public by the Commission and its staff * * *.'').

[86] *See, e.g.,* Appendix A to Part 11 of the Commission's Rules (''Informal Procedure Relating to the Recommendation of Enforcement Proceedings;'' providing that the Commission's Division of Enforcement, ''in its discretion, may inform persons who may be named in a proposed enforcement proceeding of the nature of the allegations pertaining to them.'').

[87] *See* letters from NSCP, EEI, ICI, ABA, and FSR.

[88] *See* letter from SIFMA/FIA.

[89] *See* letter from SIFMA/FIA.

[90] *See* letter from U.S. Chamber of Commerce.

[91] *See* letter from U.S. Chamber of Commerce.

[92] *See* letter from SIFMA/FIA.

of any misconduct; (3) refuse to cooperate with an entity's internal investigation; and (4) provide inaccurate or incomplete information or otherwise hinder an internal investigation.[93] This commenter further suggests that a whistleblower who reports violations to an SRO should have the same eligibility for an award as a whistleblower who reports to the Commission.[94] Another commenter commented that persons who have engaged in culpable conduct should not be eligible for awards.[95] This commenter suggested that Rule 165.6(a)(2) provide that a person will not be eligible for an award ''if he or she (or an entity whose liability is based substantially on conduct that the whistleblower directed, planned or initiated) has been convicted of a criminal violation (including entering into a plea agreement or entering a plea of *nolo contendere*), or enters into a cooperation, deferred prosecution, or non-prosecution agreement in connection with, a proceeding brought by the Commission, an SRO, or other regulator or government entity, which proceeding is related to a Commission action or a related action for which the whistleblower could otherwise receive an award.'' One commenter also suggested that the Commission should exclude wrong-doers who have participated in or facilitated the violation of the CEA from award eligibility.[96] Another commenter suggested that culpable individuals, including in-house lawyers, and other compliance personnel should not be eligible for whistleblower awards.[97] The Commission also received comment that the Commission follow the SEC's approach and exclude the spouses, parents, children or siblings of members of the agency to avoid the appearance of impropriety.[98]

The Commission also received a number of other miscellaneous comments. One commenter suggested that the exclusion should apply to the information, and not just persons, by suggesting the Commission exclude from award eligibility information reported after an employer has initiated an investigation.[99] The Commission also received a comment suggesting that the Rule require use of internal procedures as a condition for receiving an award, because such a condition would not impinge on a whistleblower's right to contact the Commission or affect the anti-retaliation provisions.[100] This commenter also suggested that the Commission revise the rule to include potential exclusions of foreign persons.

3. Final Rule

The Commission has considered each of the comments received, and has decided to adopt the rule with minor changes. With respect to the specific internal reporting issue, after considering the comments received, the Commission has concluded not to amend the rule to make ineligible any whistleblowers who do not participate in internal corporate compliance programs.[101] The Commission will, however, provide whistleblowers with incentives to report internally. The Commission has decided to adopt Rule 165.6 with a minor change to make ineligible members or officers of any foreign regulatory authority or law enforcement organization, extrapolating from Section 23(c)(2)(i) and (vi) of the Dodd-Frank Act the category making appropriate regulatory agencies and law enforcement organizations ineligible.[102] The Commission has also made explicit in Rule 165.6(a)(8) the ineligibility of any whistleblower who acquired the original information the whistleblower gave the Commission from any other person with the intent to evade any provision of the Final Rules.

G. Rule 165.7—Procedures for Award Applications and Commission Award Determinations

1. Proposed Rule

Proposed Rule 165.7 described the steps a whistleblower would be required to follow in order to make an application for an award in relation to a Commission covered judicial or administrative action or related action. In addition, the rule described the Commission's proposed claims review process.

In regard to covered actions, the proposed process would begin with the publication of a ''Notice of a Covered Action'' (''Notice'') on the Commission's Web site. Whenever a covered judicial or administrative action brought by the Commission results in the imposition of monetary sanctions exceeding $1,000,000, the Commission will cause a Notice to be published on the Commission's Web site subsequent to the entry of a final judgment or order in the action that by itself, or collectively with other judgments or orders previously entered in the action, exceeds the $1,000,000 threshold. The Commission's Proposed Rule required claimants to file their claim for an award within sixty (60) days of the date of the Notice.

In regard to related actions, a claimant would be responsible for tracking the resolution of the related action. The Commission's Proposed Rule required claimants to file their claim for an award in regard to a related action within sixty (60) days after monetary sanctions were imposed in the related action. A claimant's failure to timely file a request for a whistleblower award would bar that individual from later seeking a recovery.[103]

Subparagraph (b) of Proposed Rule 165.7 described the procedure for making a claim for an award. Specifically, a claimant would be required to submit a claim for an award on proposed Form WB–APP (''Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act''). Proposed Form WB–APP, and the instructions thereto, would elicit information concerning a whistleblower's eligibility to receive an award at the time the whistleblower filed his claim. The form would also provide an opportunity for the whistleblower to ''make his case'' for why he is entitled to an award by describing the information and assistance he has provided and its significance to the Commission's successful action.[104]

Subparagraph (b) of Proposed Rule 165.7 provided that a claim on Form WB–APP, including any attachments, must be received by the Commission within sixty (60) calendar days of the date of the Notice or sixty (60) calendar days of the date of the imposition of the monetary sanctions in the related action, the trigger date depending upon which action is the basis for the claimant's award request.

Subparagraph (c) included award application procedures for a whistleblower who submitted original information to the Commission anonymously. Whistleblowers who submitted original information anonymously, but who make a claim for a whistleblower award on a disclosed basis, are required to disclose their identity on the Form WB–APP and include with the Form WB–APP a

[93] *See* letter from SIFMA/FIA.

[94] *See* letter from SIFMA/FIA.

[95] *See* letter from ABA.

[96] *See* letter from U.S. Chamber of Commerce.

[97] *See* letter from Hunton & Williams LLP on behalf of Working Group of Commercial Energy Firms (''Working Group'') at 2.

[98] *See* letter from FSR.

[99] *See* letter from U.S. Chamber of Commerce.

[100] *See* letter from FSR.

[101] *See also* discussion below in Part II.S.

[102] *See* Rule 165.6(a)(6), (7).

[103] *See, e.g., Yuen* v. *United States,* 825 F.2d 244 (9th Cir. 1987) (taxpayer barred from recovery due to failure to timely file a written request for refund).

[104] *See* discussion of Proposed Rule 165.9 for a non-exhaustive list of factors the Commission preliminarily believes it will consider in determining award amounts.

signed and completed Form WB–DEC. Whistleblowers who submitted information anonymously, and make a claim for a whistleblower award on an anonymous basis, must be represented by counsel and must provide their counsel with a completed and signed Form WB–DEC by no later than the date upon which the counsel submits to the Commission the whistleblower's Form WB–APP. In addition, whistleblower's counsel must submit with the Form WB–APP a separate Form WB–DEC certifying that the counsel has verified the whistleblower's identity, has reviewed the whistleblower's Form WB–DEC for completeness and accuracy, will retain the signed original of the whistleblower's Form WB–DEC in counsel's records, and will produce the whistleblower's Form WB–DEC upon request of the Commission's staff. Proposed Rule 165.7(c) made explicit that regardless of whether the whistleblower made an award application on a disclosed or anonymous basis, the whistleblower's identity must be verified in a form and manner that is acceptable to the Commission prior to the payment of any award.

Subparagraph (d) of Proposed Rule 165.7 described the Commission's claims review process. The claims review process would begin upon the expiration of the time for filing any appeals of the Commission's judicial or administrative action and the related action(s), or, where an appeal has been filed, after all appeals in the action or related action(s) have been concluded.

Under the proposed process, the Commission would evaluate all timely whistleblower award claims submitted on Form WB–APP. In connection with this process, the Commission could require that claimants provide additional information relating to their eligibility for an award or satisfaction of any of the conditions for an award, as set forth in Proposed Rule 165.5(b). Following that evaluation, the Commission would send any claimant a determination setting forth whether the claim is allowed or denied and, if allowed, setting forth the proposed award percentage amount.

2. Comments

One commenter stated that Proposed Rule 165.7 is unworkable, and that whistleblowers cannot be expected to follow the Commission's Web site and understand that a published sanction on the web site is related to the information provided by the whistleblower.[105] This commenter also suggested that when the Commission believes it will obtain a sanction, discussions should be initiated with the whistleblower to negotiate the proper percentage of award because to do so would reduce administrative costs, facilitate cooperation between the Commission and the whistleblower, and expedite the payment of awards.[106] This commenter supported this assertion by referencing the *qui tam* procedure under the False Claims Act.[107] Commenters suggested that the Commission add or revise rules to incorporate recommendations made by the SEC Office of the Inspector General (''OIG'') in its audit of the SEC's previous whistleblower award program.[108] One commenter suggested that the Commission examine ways to notify whistleblowers of the status of their award without releasing confidential information during the course of an investigation.[109] Another commenter stated that Proposed Rule 165.7 unduly burdens and creates hurdles for whistleblowers by requiring that they notify the Commission of their claim for an award. This commenter argued that because the Commission handles enforcement actions and knows which individuals made submissions, the Commission should notify potential claimants that their claim to an award, if any, has ripened.[110]

Similarly, another commenter suggested that the Commission should streamline the whistleblower application process by adopting a process similar to the whistleblower process adopted by the IRS, which another commenter claims is more user-friendly and efficient. This commenter contended that it is an onerous condition to require a whistleblower to track on the Commission's Web site the disposition of the covered action and that the 60-day period is too narrow a window to allow a whistleblower to complete an application for an award.[111]

3. Final Rule

After considering the comments received, the Commission has decided to adopt Rule 165.7 with changes. First, the Commission has decided to increase the period for claimants to file their claim for an award from sixty (60) days to ninety (90) days. This additional time should provide claimants with a better opportunity to review the Commission's Web site and file an application following the publication of a Notice. In the Commission's view, this 90-day period strikes an appropriate balance between competing whistleblower interests—allowing all potential whistleblowers a reasonable opportunity to periodically review the Commission's Web site and to file an application, on the one hand, while providing finality to the application period so that the Commission can begin the process of assessing any applications and making a timely award to any qualifying whistleblowers, on the other hand.

Second, in light of comments that the Commission simplify the WB–APP form, the Commission has made optional Section G (''Entitlement to Award) of the form, which provides whistleblowers with the opportunity to ''[e]xplain the basis for the whistleblower's belief that the whistleblower is entitled to an award'' and to ''[p]rovide any additional information the whistleblower think may be relevant in light of the criteria for determining the amount of an award.'' As commenters stated, when a whistleblower has worked closely with the staff on a matter, requiring that whistleblower to furnish a submission explaining the degree and value of his or her assistance may be unnecessary. At the same time, such a whistleblower—or other claimants who have not worked as closely with the staff and wish to advocate the value of their assistance—should have the opportunity to do so. The Commission has determined not to make any further modifications to the form, however, because the remaining information that the Commission requests is in its view necessary to provide a sufficient record for a full and fair consideration of the claimant's application (and, if a petition for review is filed, so that the court of appeals has a sufficient record to conduct a review).

The Commission has decided not to eliminate the Notice or to otherwise model the procedures after those employed in the *qui tam* context. The *qui tam* context is substantially different from the Commission's situation because *qui tam* actions necessarily involve one or more known individuals with whom the Department of Justice will have worked. By contrast, in enforcement actions that the Commission institutes and litigates (based in part on information and assistance from one or more whistleblowers), there may be one whistleblower with whom the Commission has worked closely, but there may be other claimants who have

[105] *See* letter from NWC.

[106] *See* letter from NWC.

[107] *See* letter from NWC.

[108] *See* letters from NWC, POGO; *see* also SEC OIG ''Assessment of the SEC's Bounty Program,'' Mar. 29, 2010, Report No. 474.

[109] *See* letter from POGO.

[110] *See* letter from TAF.

[111] *See* letter from NCCMP.

a potential basis for award eligibility as well. The Commission's procedures must provide due process to *all* potential claimants and accordingly cannot be restricted by the happenstance that some claimants worked more closely with staff. For that reason, the Commission believes the ''Notice of Covered Action'' procedure provides the best mechanism to provide notice to all whistleblower claimants who may have contributed to the action's success.[112]

H. Rule 165.8—Amount of Award

1. Proposed Rule

If all conditions are met, Proposed Rule 165.8 provided that the whistleblower awards shall be in an aggregate amount equal to between 10 and 30 percent, in total, of what has been collected of the monetary sanctions imposed in the Commission's action or related actions. This range is specified in Section 23(b)(1) of the CEA. Where multiple whistleblowers are entitled to an award, subparagraph (b) stated that the Commission will independently determine the appropriate award percentage for each whistleblower, but total award payments, in the aggregate, will equal between 10 and 30 percent of the monetary sanctions collected either in the Commission's action or a related action (but not both the Commission's action and the related action).

2. Comments

The Commission received one comment on this Proposed Rule. The commenter, a United States Senator, suggested that the Commission place reasonable monetary limits on awards to protect against inappropriate monetary incentives while still encouraging potential whistleblowers to come forward. This commenter also suggested that the Commission place reasonable limits on amounts of funds that can be awarded to any single whistleblower in any one matter.[113] This commenter further suggested that the Commission provide financial incentives to whistleblowers who report to their employers' internal compliance programs, which will give the company an earlier opportunity to address potential problems and prevent further harm.[114]

3. Final Rule

After considering the comment received, the Commission is adopting Rule 165.8 as proposed because it follows the statutory requirements. Paragraph (b) of Section 23 of the CEA states that the Commission will independently determine the appropriate award percentage for each whistleblower, but total award payments, in the aggregate, will equal between 10 and 30 percent of the monetary sanctions collected in the Commission's action or any related action. The Commission's Final Rule tracks this provision. Thus, for example, one whistleblower could receive an award of 25 percent of the collected sanctions, and another could receive an award of 5 percent, but they could not each receive an award of 30 percent. As the Commission noted in the Proposed Rule, because the Commission anticipates that the timing of award determinations and the value of a whistleblower's contribution could be different for the Commission's action and for related actions, the Rule would provide that the percentage awarded in connection with a Commission action may differ from the percentage awarded in related actions. But, in any case, the amounts would, in total, fall within the statutory range of 10 to 30 percent. As to the suggestion that the Commission use its discretion to avoid giving excessive awards, the Commission notes that the statute requires that the Commission give an award of a minimum of 10 percent of the amount collected regardless of the overall size of the resultant award, and the Commission does not have discretion to reduce that statutory minimum.[115]

I. Rule 165.9—Criteria for Determining Amount of Award

1. Proposed Rule

Assuming that all of the conditions for making an award to a whistleblower have been satisfied, Proposed Rule 165.9 set forth the criteria that the Commission would take into consideration in determining the amount of the award. Subparagraphs (a)(1) through (3) of the Proposed Rule recited three criteria that Section 23(c)(1)(B) of the CEA requires the Commission to consider, and subparagraph (a)(4) adds a fourth criterion based upon the discretion given to the Commission to consider ''additional relevant factors'' in determining the amount of an award.

Subparagraph (a)(1) requires the Commission to consider the significance of the information provided by a whistleblower to the success of the Commission action or related action. Subparagraph (a)(2) requires the Commission to consider the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the Commission action or related action. Subparagraph (a)(3) requires the Commission to consider the programmatic interest of the Commission in deterring violations of the CEA by making awards to whistleblowers that provide information that led to successful enforcement of covered judicial or administrative actions or related actions. Subparagraph (a)(4) would permit the Commission to consider whether an award otherwise enhances the Commission's ability to enforce the CEA, protect customers, and encourage the submission of high quality information from whistleblowers.

The Commission anticipates that the determination of award amounts pursuant to subparagraphs (a)(1)–(4) will involve highly individualized review of the circumstances surrounding each award. To allow for this, the Commission preliminarily believed that the four criteria afford the Commission broad discretion to weigh a multitude of considerations in determining the amount of any particular award. Depending upon the facts and circumstances of each case, some of the considerations may not be applicable or may deserve greater weight than others.

The permissible Commission considerations include, but are not limited to:

- The character of the enforcement action including whether its subject matter is a Commission priority, whether the reported misconduct involves regulated entities or fiduciaries, the type of CEA violations, the age and duration of misconduct, the number of violations, and the isolated, repetitive, or ongoing nature of the violations;
- The dangers to customers or others presented by the underlying violations involved in the enforcement action including the amount of harm or potential harm caused by the underlying violations, the type of harm resulting from or threatened by the underlying violations, and the number of individuals or entities harmed;
- The timeliness, degree, reliability, and effectiveness of the whistleblower's assistance;
- The time and resources conserved as a result of the whistleblower's assistance;
- Whether the whistleblower encouraged or authorized others to

[112] The SEC takes the same approach to this issue. *See* SEC Rule 240.21F–10(a).

[113] *See* letter from Senator Carl Levin.

[114] *See* letter from Senator Carl Levin.

[115] *See* discussion below, in Part II.S., regarding Internal Reporting and Harmonization.

assist the staff who might not have otherwise participated in the investigation or related action;

• Any unique hardships experienced by the whistleblower as a result of his or her reporting and assisting in the enforcement action;

• The degree to which the whistleblower took steps to prevent the violations from occurring or continuing;

• The efforts undertaken by the whistleblower to remediate the harm caused by the violations including assisting the authorities in the recovery of the fruits and instrumentalities of the violations;

• Whether the information provided by the whistleblower related to only a portion of the successful claims brought in the covered judicial or administrative action or related action; [116] and

• The culpability of the whistleblower, including whether the whistleblower acted with scienter, both generally and in relation to others who participated in the misconduct.

These considerations are not listed in order of importance nor are they intended to be all-inclusive or to require a specific determination in any particular case.

Finally, subparagraph (b) to Proposed Rule 165.9 reiterated the statutory prohibition in Section 23(c)(1)(B)(ii) of the CEA from taking into consideration the balance of the Fund when making an award determination.

2. Comments

The Commission received comment that the Rule should expressly permit the Commission to deny an award when it determines that payment of an award would be against public policy.[117] One commenter, a Senator, also expressed concern that excessive monetary incentives may lead to misreporting causing investigative waste.[118] The Senator also suggested that the Commission should exercise discretion afforded the Commission in Section 23(c)(1)(A) to reasonably limit the amount that may be awarded to a single whistleblower in any one matter.

3. Final Rule

The Commission notes that the SEC, in promulgating its own final whistleblower rules, added two additional discretionary factors to consider in making award amount decisions: (1) ''whether the whistleblower unreasonably delayed reporting the securities violations (SEC Rule 240.21F–6(b)(2))''; and (2) whether the whistleblower interfered or hindered internal compliance and reporting systems (SEC Rule 240.21F–6(b)(3)). The Commission has amended the Rule to add such factors in the interest of increasing transparency regarding the Commission's award determination process, and to be consistent with the statutory mandate in Section 23(c)(1)(B)(IV) of the CEA that the Commission establish additional relevant factors per rule or regulation. In addition, with respect to the Senator's comment, the Rule now affords the Commission discretion regarding award determinations to take into consideration ''[p]otential adverse incentives from oversize awards''.[119]

J. Rule 165.10—Contents of Record for Award Determinations

In order to promote transparency and consistency, and also to preserve a clear record for appellate review (under Proposed Rule 165.13) of Commission award determinations (under Proposed Rule 165.7), Proposed Rule 165.10 set forth the contents of record for award determinations relating to covered judicial or administrative actions or related actions. Under the Proposed Rule, the record shall include: required forms the whistleblower submits to the Commission, including related attachments; other documentation provided by the whistleblower to the Commission; the complaint, notice of hearing, answers and any amendments thereto; the final judgment, consent order, or administrative speaking order; the transcript of the related administrative hearing or civil injunctive proceeding, including any exhibits entered at the hearing or proceeding; and any other documents that appear on the docket of the proceeding. Under the Proposed Rule, the record shall also include statements by litigation staff to the Commission regarding the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action or related action; and the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action or related action.

However, Proposed Rule 165.10(b) explicitly stated that the record upon which the award determination under Proposed Rule 165.7 shall be made shall not include any Commission pre-decisional or internal deliberative process materials related to the Commission's or its staff's determinations: (1) To file or settle the covered judicial or administrative action; and/or (2) whether, to whom and in what amount to make a whistleblower award. Further, the record upon which the award determination under Proposed Rule 165.7 shall be made shall not include any other entity's pre-decisional or internal deliberative process materials related to its or its staff's determination to file or settle a related action.

The Commission did not receive any comments on the contents of record for award determinations. The Commission has considered the issue and has decided to adopt Rule 165.10 as proposed, with two modifications intended to improve clarity. First, the Final Rule clarifies that the record shall not include documents protected under the attorney-client privilege or the attorney work-product privilege. Second, the ''statements by litigation staff'' provision has been simplified to include ''[s]worn declarations (including attachments) from the Commission's Division of Enforcement staff regarding any matters relevant to the award determination.''

K. Rule 165.11—Awards Based Upon Related Actions

Proposed Rule 165.11 provided that the Commission, or its delegate, may determine an award based on amounts collected in related actions brought by appropriate Federal or state agencies, registered entities, or SROs rather than on the amount collected in a covered judicial or administrative action. Regardless of whether the Commission's award determination is based on the Commission's covered judicial or administrative action or a related action or actions, Rule 165.7 sets forth the procedures for whistleblower award applications and Commission award determinations.

The Commission received one comment regarding awards based upon related actions. The commenter suggested that the Commission should remove the potential for a whistleblower to recover from both the Commission

[116] As described elsewhere in these rules, if the information provided by a whistleblower relates to only a portion of a successful covered judicial or administrative action or related action, the Commission proposes to look to the entirety of the action (including all defendants or respondents, all claims, and all monetary sanctions obtained) in determining whether the whistleblower is eligible for an award and the total dollar amount of sanctions on which the whistleblower's award will be based. Under subparagraph (a) of Proposed Rule 165.9, the fact that a whistleblower's information related to only a portion of the overall action would be a factor in determining the amount of the whistleblower's award. Thus, if the whistleblower's information supported only a small part of a larger action, that would be a reason for making an award based upon a smaller percentage amount than otherwise would have been awarded.

[117] *See* letter from ABA.

[118] *See* letter from Senator Carl Levin.

[119] Rule 165.9(a)(5).

and the SEC for providing each agency with the same information. This commenter noted that the SEC will not make an award for a related action, and that the Commission's provisions should be similar.[120]

The Commission has considered the comment and has decided to adopt Rule 165.11 as proposed, with one modification. Rule 165.11 tracks Section 23(a)(5) of the CEA, and the payment of awards on related actions is not within in the discretion of the Commission. Rule 165.11(a)(5) adds ''[a] foreign futures authority'' to the list of authorities whose judicial or administrative actions could potentially qualify as a ''related action.'' [121]

L. Rule 165.12—Payment of Awards From the Fund, Financing Customer Education Initiatives, and Deposits and Credits to the Fund

1. Proposed Rule

Proposed Rule 165.12 sets forth Commission procedures with respect to the Fund to pay whistleblower awards, fund customer education initiatives, and maintain appropriate amounts in the Fund.

Proposed Rule 165.12(c) provides that the Commission shall undertake and maintain customer education initiatives. The initiatives shall be designed to help customers protect themselves against fraud or other violations of the CEA, or the rules or regulations thereunder. The Commission shall fund the customer education initiatives, and may utilize funds deposited into the Fund during any fiscal year in which the beginning (October 1) balance of the Fund is greater than $10,000,000.

The Commission limits discretion to finance customer education initiatives to fiscal years in which the beginning (October 1) balance of the Fund is greater than $10,000,000 in order to limit the possibility that spending on customer education initiatives may inadvertently result in the Commission operating the Fund in a deficit and thereby delay award payments to whistleblowers.

2. Comments

The Commission received one comment that suggested Fund amounts be used to educate the public about the rights of whistleblowers. The comment suggests that the Commission publish materials that companies can distribute to their employees that are simple and easy to understand informing them of their rights as a potential whistleblower.[122] The Commission did not receive any comments regarding the Commission's delegation of authority to the Office of the Executive Director.

3. Final Rule

The Commission has considered the comment received regarding the use of the Fund. The Commission has established a working group to make suggestions regarding customer education initiatives. The Commission has decided to adopt Rule 165.12 with revisions. Specifically, the Final Rule includes revisions to reflect the Commission's intent to undertake and maintain customer education initiatives through an Office of Consumer Outreach. Because Rule 165.12 is a rule of the Commission's ''organization, procedure, or practice,'' the Commission is not presenting these revisions for notice and comment.[123]

M. 165.13—Appeals

1. Proposed Rule

Section 23(f) of the CEA provided for rights of appeal of Final Orders of the Commission with respect to whistleblower award determinations.[124] Subparagraph (a) of Proposed Rule 165.13 tracks this provision and describes claimants' rights to appeal. Claimants may appeal any Commission final award determination, including whether, to whom, or in what amount to make whistleblower awards, to an appropriate court of appeals within thirty (30) days after the Commission's final order of determination.

Subparagraph (b) of Proposed Rule 165.13 designates the materials that shall be included in the record on any appeal. Those materials include: The Contents of Record for Award Determinations, as set forth in Proposed Rule 165.10, and any Final Order of the Commission, as set forth in Rule 165.7(e).

2. Comments

The Commission received one comment regarding appeals.[125] This commenter suggested that a whistleblower who provides information to the Commission that the Commission subsequently decides not to pursue should have the right to appeal to the Commission's Office of the Inspector General the decision not to pursue. This commenter reasons that otherwise legitimate claims that could expose violations could be dismissed without appropriate investigation.

3. Final Rule

After considering the comment received, the Commission has decided to adopt Rule 165.13 as proposed. The Final Rule tracks Section 23(f) of the CEA, which states that appeals of Commission decisions regarding whistleblower awards may be made to the appropriate U.S. Circuit Court of Appeals. However, although Section 23(f) provides for appeals of Commission determinations of whether, to whom, or in what amount to make an award, it does not grant any right to appeal the Commission's prosecutorial discretion, including the Commission's decisions to: open or close an investigation; file an enforcement action, including the Commission's determination of the violations charged; and settling an enforcement action.

N. Rule 165.14—Procedures Applicable to the Payment of Awards

1. Proposed Rule

Proposed Rule 165.14 addressed the timing for payment of an award to a whistleblower. Any award made pursuant to the rules would be paid from the Fund established by Section 23(g) of the CEA.[126] Subparagraph (a) provided that a recipient of a whistleblower award will be entitled to payment on the award only to the extent that a monetary sanction is collected in the covered judicial or administrative action or in a related action upon which the award is based. This requirement is derived from Section 23(b)(1) of the CEA,[127] which provides that an award is based upon the monetary sanctions collected in the covered judicial or administrative action or related action.

Subparagraph (b) stated that any payment of an award for a monetary sanction collected in a covered judicial or administrative action shall be made within a reasonable period of time following the later of either the completion of the appeals process for all whistleblower award claims arising from the covered judicial or administrative action, or the date on which the monetary sanction is collected. Likewise, the payment of an award for a monetary sanction collected in a related action shall be made within a reasonable period of time following the later of either the completion of the appeals process for all whistleblower award claims arising from the related action, or the date on which the monetary sanction is collected. This

[120] *See* letter from FSR.

[121] *See* 7 U.S.C. 26(a)(5), 26(h)(2)(C)(i)(VI).

[122] *See* letter from NCCMP.

[123] *See* 5 U.S.C. 553.

[124] *See* Section 23(f) of the CEA, 7 U.S.C. 26(f).

[125] *See* letter from NCCMP.

[126] 7 U.S.C. 26(g).

[127] 7 U.S.C. 26(b)(1).

provision is intended to cover situations where a single action results in multiple whistleblowers claims. Under this scenario, if one whistleblower appeals a Final Order of the Commission relating to a whistleblower award determination, then the Commission would not pay any awards in the action until that whistleblower's appeal has been concluded, because the disposition of that appeal could require the Commission to reconsider its determination and thereby affect all payments for that covered judicial or administrative action or related action.

Subparagraph (c) of Proposed Rule 165.14 described how the Commission will address situations where there are insufficient amounts available in the Fund to pay the entire amount of an award to a whistleblower or whistleblowers within a reasonable period of time from when payment should otherwise be made. In this situation, the whistleblower or whistleblowers will be paid when amounts become available in the Fund, subject to the terms set forth in proposed subparagraph (c). Under proposed subparagraph (c), where multiple whistleblowers are owed payments from the Fund based on awards that do not arise from the same Notice or resolution of a related action, priority in making payment on these awards would be determined based upon the date that the Final Order of the Commission is made. If two or more of these Final Orders of the Commission are entered on the same date, then those whistleblowers owed payments will be paid on a pro rata basis until sufficient amounts become available in the Fund to pay their entire payments. Under proposed subparagraph (c)(2), where multiple whistleblowers are owed payments from the Fund based on awards that arise from the same Notice or resolution of a related action, they would share the same payment priority and would be paid on a pro rata basis until sufficient amounts become available in the Fund to pay their entire payments.

2. Comments and Final Rule

The Commission did not receive any comments regarding procedures applicable to the payment of awards. The Commission is adopting Rule 165.14 as proposed. The Final Rule tracks the relevant provisions of Section 23 of the CEA.

O. Rule 165.15—Delegations of Authority

Proposed Rule 165.15 included the Commission's delegations to the Executive Director to take certain actions to carry out this Part 165 of the Rules and the requirements of Section 23(g) of CEA. Specifically, Proposed Rule 165.15 delegated authority to the Executive Director, or a designee, upon the concurrence of the General Counsel and the Director of the Commission's Division of Enforcement, to make both deposits into and award payments out of the Fund.

The Commission did not receive any comments regarding delegations of authority. The Commission is adopting Rule 165.15 with revisions to address internal Commission organizational and procedural issues. Specifically, the Final Rule includes revisions to reflect the Commission's delegation to a Whistleblower Office the authority to administer the Commission's whistleblower program. The Final Rule also provides that the Commission will exercise its authority to make whistleblower award determinations through a delegation of authority to a panel that shall be composed of three of the Commission's Offices or Divisions. Under Rule 165.15, the Commission's Executive Director will select the members of the ''Whistleblower Award Determination Panel.'' Because Rule 165.15 is a rule of the Commission's ''organization, procedure, or practice,'' the Commission is not presenting these revisions for notice and comment.[128]

P. Rule 165.16—No Immunity and Rule 165.17—Awards to Whistleblowers Who Engage in Culpable Conduct

1. Proposed Rules

Proposed Rule 165.16 provided notice that the provisions of Section 23 of the CEA do not provide immunity to individuals who provide information to the Commission relating to a violation of the CEA. Some whistleblowers who provide original information that significantly aids in detecting and prosecuting sophisticated manipulation or fraud schemes may themselves be participants in the scheme who would be subject to Commission enforcement actions. While these individuals, if they provide valuable assistance to a successful action, will remain eligible for a whistleblower award, they will not be immune from prosecution. Rather, the Commission will analyze the unique facts and circumstances of each case in accordance with its Enforcement Advisory, ''Cooperation Factors in Enforcement Division Sanction Recommendations'' to determine whether, how much, and in what manner to credit cooperation by whistleblowers who have participated in misconduct.[129]

The options available to the Commission and its staff for facilitating and rewarding cooperation ranges from taking no enforcement action to pursuing charges and sanctions in connection with enforcement actions.

Whistleblowers with potential civil liability or criminal liability for CEA violations that they report to the Commission remain eligible for an award. However, pursuant to Section 23(c)(2)(B) of the CEA,[130] if a whistleblower is convicted of a criminal violation related to the judicial or administrative action, they are not eligible for an award. Furthermore, if a defendant or respondent in a Commission action or a related action is ordered to pay monetary sanctions in a civil enforcement action, Proposed Rule 165.17 stated that the Commission will not count the amount of such monetary sanctions toward the $1,000,000 threshold in considering an award payment to such a defendant or respondent in relation to a covered judicial or administrative action, and will not add that amount to the total monetary sanctions collected in the action for purposes of calculating any payment to the culpable individual. The rationale for this limitation is to prevent wrongdoers from financially benefiting from their own misconduct, and ensures equitable treatment of culpable and non-culpable whistleblowers. For example, without such a prohibition, a whistleblower that was the leader or organizer of a fraudulent scheme involving multiple defendants that resulted in total monetary sanctions of $1,250,000, which would exceed the $1,000,000 minimum threshold required for making an award, could potentially be eligible for an award even though he personally was ordered to pay $750,000 of those monetary sanctions. Under similar circumstances, a non-culpable whistleblower would be deemed ineligible for an award if they reported a CEA violation that resulted in monetary sanctions of less than $1,000,000. The Proposed Rule would prevent such inequitable treatment.

2. Comments

Many commenters suggested that the Commission should not allow whistleblowers with varying degrees of culpability to be eligible for an

[128] *See* 5 U.S.C. 553.

[129] *See http://www.cftc.gov/ucm/groups/public/@cpdisciplinaryhistory/documents/file/enfcooperation-advisory.pdf.*

[130] 7 U.S.C. 26(c)(2)(B).

award.[131] These comments are discussed under Rule 165.6 in the context of discussing whistleblowers ineligible for an award.[132]

3. Final Rule

Upon consideration of the comments, the Commission has decided to adopt Rules 165.16 and 165.17 as proposed. These rules track the Commission's authority to deny whistleblower awards to individuals who are criminally culpable as stated in Section 23(c)(2)(B). As discussed above with respect to Rule 165.9, the Commission will consider ''the culpability or involvement of the whistleblower in matters associated with the Commission's action or related actions'' in determining the amount of a whistleblower award.[133]

Q. Rule 165.18—Staff Communications With Whistleblowers From Represented Entities

1. Proposed Rule

Proposed Rule 165.18 clarified the staff's authority to communicate directly with whistleblowers who are directors, officers, members, agents, or employees of an entity that has counsel, and who have initiated communication with the Commission relating to a potential violation of the CEA. The Proposed Rule made clear that the staff is authorized to communicate directly with these individuals without first seeking the consent of the entity's counsel.

Section 23 of the CEA evinces a strong Congressional policy to facilitate the disclosure of information to the Commission relating to potential CEA violations and to preserve the confidentiality of those who do so.[134] This Congressional policy would be significantly impaired were the Commission required to seek the consent of an entity's counsel before speaking with a whistleblower who contacts the Commission and who is a director, officer, member, agent, or employee of the entity. For this reason, Section 23 of the CEA implicitly authorizes the Commission to communicate directly with these individuals without first obtaining the consent of the entity's counsel.

The Commission included this authority in the Proposed Rule to promote whistleblowers' willingness to disclose potential CEA violations to the Commission by reducing or eliminating any concerns that whistleblowers might have that the Commission is required to request consent of the entity's counsel and, in doing so, might disclose their identity. The Commission intended the Proposed Rule to clarify that, in accordance with American Bar Association Model Rule 4.2, the staff is authorized by law to make these communications.[135] American Bar Association Model Rule 4.2 provides as follows:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or *is authorized to do so by law* or a court order.

Model Rules of Prof'l Conduct R. 4.2 (emphasis added). Under this provision, for example, the Commission could meet or otherwise communicate with the whistleblower privately, without the knowledge or presence of counsel or other representative of the entity.

2. Comments

The ABA strongly disagreed with the Commission's view that Part 165 authorized the Commission to bypass state bar ethics rules.[136] The ABA also expressed concern that Proposed Rule 165.18 may have profound implications with respect to the preservation of an entity's attorney-client privilege and information protected by the work-product doctrine.[137] The ABA stated:

> [W]e strongly disagree with the Commission's view that Part 165 authorized the Commission to bypass state bar ethics rules. In our view, Proposed Rule 165.18 may have profound implications with respect to the preservation of an entity's attorney-client privilege and information protected by the work-product doctrine * * *. The Commission would justify this position by viewing the discussions with such a person as having been 'authorized by law.' However, it is not clear to us as to whether a Commission Rule (as opposed to a statute) can supersede the State Bar provisions governing attorney conduct * * *. Proposed Rule 165.18 deals not with the initial communication by the employee, but instead with responsive communications by the staff. Having had the benefit of a whistleblower's initial communication, we see no reasonable basis not to require the staff to communicate with entity counsel prior to any further communications.

The ABA also advised, in the alternative, that if the Commission retains Proposed Rule 165.18, it should be revised to include procedures governing staff communications to ensure that attorney-client privileges and the information protected by attorney work-product doctrine are not jeopardized.[138] The ABA elaborated that, ''information the CFTC might seek from an employee, and which the employee might disclose, might have derived from privileged communications the employee or others within the organization might have had with the entity's counsel.'' It was also suggested that the right to waive the privilege in such circumstances would belong to the entity, not to any single employee, and that the ability of Commission staff to communicate with an employee without first seeking the consent of the entity's counsel may affect the entity's ability to claim privilege with respect to such matters.'' Finally, the ABA suggested that ''[h]aving had the benefit of a whistleblower's initial communication, we see no reasonable basis not to require the [CFTC] staff to communicate with entity counsel prior to any further communications,'' because in many cases CFTC communications with entity counsel preceding further discussions with a whistleblower could assist the CFTC's investigative efforts. Another commenter recommended that Proposed Rule 165.18 be clarified to provide that ''if the commission remains in contact with a whistleblower during the course of an entity's internal investigation, it cannot seek from the whistleblower information about counsel's views and advice (or the privileged information and discussions) that the whistleblower obtains during that investigation.'' [139] Another commenter warned that ''[t]he communications contemplated by Section 165.18 of the Proposed Rules run afoul of ABA Model Rule 4.2 * * *'' and recommended that the Commission ''should withdraw Section 165.18 of the Proposed Rules.'' [140]

3. Final Rule

After considering the comments received, the Commission has decided to adopt Rule 165.18, with modifications. The Final Rule authorizes the staff to directly communicate with directors, officers, members, agents, or employees of an entity that has counsel where the individual first initiates communication with the Commission as a whistleblower; the staff is authorized to have such direct communication without the consent of the entity's counsel. The Commission believes that the Rule implements congressional

[131] *See* letters from SIFMA/FIA, and U.S. Chamber of Commerce.

[132] *See* above, Section II.F.

[133] *See* Section II.I, above, discussing Rule 165.9(c)(1).

[134] *See* Section 23(b)–(d) and (h) of the CEA, 7 U.S.C 26(b)–(d), (h).

[135]

[136] *See* letter from ABA.

[137] *See* letter from ABA.

[138] *See* letter from ABA.

[139] *See* letter from SIFMA/FIA.

[140] *See* letter from FSR.

intent and meets the ''authorized by law'' exception to ABA Model Rule of Professional Conduct 4.2 and similar state bar rules that might otherwise prohibit direct communication.

With respect to the ABA's comment that ''it is not clear to [the ABA] as to whether a Commission Rule (as opposed to a statute) can supersede the State Bar provisions governing attorney conduct'', the Commission does not believe that Final Rule 165.18 ''supersedes'' state bar provisions. Rather, the Commission believes that by granting the Commission rulemaking authority pursuant to Section 23(i) of the CEA to implement an effective whistleblower program, Congress conferred upon the Commission the authority to permit its staff to have direct communications with whistleblowers without seeking consent of an entity's counsel. Final Rule 165.18, therefore, is intended to and does satisfy the ''authorized by law'' exception to the rule that would otherwise prohibit an attorney from communicating directly with an individual about a matter when the individual is represented by counsel in the matter.[141]

The Commission disagrees with any suggestion that the Commission does not have the authority to give such permission. The authority is derived from Congress's direction in Section 23(i) of the CEA to promulgate rules to create an effective and robust whistleblower program, and to preserve the confidentiality of whistleblowers.[142] The Commission believes that it would undermine Congressional intent if staff were prohibited from communicating directly with a whistleblower merely because the whistleblower was employed by an entity that was represented by counsel. Not only would such a prohibition allow a state bar rule to trump a federal statute and an independent federal agency's rule, but such a blanket prohibition would have the perverse result of giving an entity the option to decide whether a whistleblower should be allowed to report the entity's misconduct to the Commission. Giving an entity the right to stifle a whistleblower plainly is not what Congress intended. Nor would it be consistent with congressional intent to require staff to identify a whistleblower to an entity, which would be necessary if the staff were required to seek the entity's counsel consent to speak to the whistleblower. Such a requirement could deter whistleblowers from coming forward, which would frustrate congressional purpose.

Moreover, any state bar prohibition on attorney contact with an employee ultimately is premised on the notion that an entity-employer's counsel is by extension the employee's counsel. However, a lawyer for an entity cannot ethically also represent a whistleblower-employee on the same matter when the whistleblower's interests and the entity's interests are in conflict, such as when a whistleblower wants to report an entity's misconduct to the Commission.[143] Based on the same reasoning, Rule 165.18 does not authorize Commission staff to have direct communication with a whistleblower who is personally represented by an attorney without the consent of that attorney.

Authorizing the staff to have direct communication with a whistleblower employed by a represented entity does not mean that the staff should be the first to initiate such contact. For the sake of clarity, the Commission is explicitly modifying the proposed rule to grant authority only when the whistleblower first initiates contact with the staff. Thereafter, all direct communications are ''authorized by law.''

In addition, the Commission acknowledges some commenters' concern that direct communication with whistleblowers raises the possibility of the staff's inadvertent receipt of information covered by an entity's attorney-client privilege or the attorney work product protection. These concerns are valid. This Rule does not authorize staff to access information protected by the attorney-client privilege or attorney work product protection. Accordingly, when invoking Rule 165.18, the staff shall undertake reasonable best efforts to avoid receiving such information.

R. Rule 165.19—Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration of Disputes

Consistent with Congressional intent to protect whistleblowers from retaliation as reflected in Section 23(h) of the CEA, Proposed Rule 165.19 provided that the rights and remedies provided for in Part 165 of the Commission's Regulations may not be waived by any agreement, policy, form, or condition of employment including by a predispute arbitration agreement. No pre-dispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this Part.

The Commission did not receive any comments on Proposed Rule 165.19. The Commission is adopting Rule 165.19 as proposed. This rule tracks Section 23(n) of the CEA and is in keeping with congressional intent to make waiver of certain rights and remedies of whistleblowers nonenforceable, as well as any predispute arbitration agreement if the agreement requires arbitration of a dispute arising under Part 165.

S. Internal Reporting and Harmonization

The Proposed Rules did not require individuals to report potential CEA violations to their employers. However, the Proposed Rules did include provisions that would allow employees to claim an award from the Commission if they reported the information to their employer and the employer reported that information to the Commission.[144] Numerous commenters requested that the Commission either make internal reporting mandatory for whistleblowers, or at least provide individuals with incentives to make internal reports.

Several commenters recommended that the Commission adopt a ''provision requiring internal reporting by all employees as a condition of eligibility for a whistleblower award.'' [145] Some commentators suggest that the only exception to internal reporting should be when the whistleblower can prove that the employer's internal system is

[141] The Commission is mindful that the SEC has reached the same conclusion with respect to the SEC's Dodd-Frank Act whistleblower provision. *See* SEC Rule 240.21F–17(b) (''If you are a director, officer, member, agent, or employee of an entity that has counsel, and you have initiated communication with the Commission relating to a possible securities law violation, the staff is authorized to communicate directly with you regarding the possible securities law violation without seeking the consent of the entity's counsel.'').

[142] *Cf.* ABA Formal Ethics Opinion 95–396 (1995) (Rule 4.2's exception permitting communication ''authorized by law'' is satisfied by ''a constitutional provision, statute or court rule, having the force and effect of law, that expressly allows a particular communication to occur in the absence of counsel.''); *see, e.g., Wilkerson* v. *Brown,* 995 P.2d 393 (Kan. Ct. App. 1999) (statutes allowing for service of demands and offers of judgment on opposing party trigger ''authorized by law'' exception to anti-contact rule); *Lewis* v. *Bayer A.G.,* No. 2353 Aug. Term 2001, 2002 WL 1472339 (Pa. C.P. June 12, 2002) (drug company's mailings to putative members of plaintiff class of patients who experienced adverse drug reactions were sent pursuant to FDA regulations and thus were ''authorized by law'').

[143] *See, e.g.,* ABA Model Rule 1.7(a) (providing, in general, that ''a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if * * * the representation of one client will be directly adverse to another client'').

[144] *See* Proposed Rule 165.2(l).

[145] *See* letter from NSCP; *see also* letters from EEI, ICI, ACC, Equal Employment Advisory Council (''EEAC''), U.S. Chamber of Commerce, ABA, and FSR.

inadequate.[146] One commenter suggested that ''[t]he rules should provide that an internal reporting requirement prior to going to the CFTC would not apply where it would be futile, for example where individuals responsible for investigating complaints were themselves involved in the alleged violations,'' and ''if the entity has an effective internal compliance reporting system and internal reporting would not be futile, the entity should be allowed at least 180 days to complete its own internal investigation before the whistleblower can report the matter to the CFTC.'' [147]

Other commentators cautioned against making internal reporting mandatory. One commenter stated ''[r]equiring that a whistleblower first advance his allegations internally to officials who may be the architects of the scheme places that individual's livelihood in peril. * * * In addition, requiring that whistleblowers report internally first in all situations can imperil law enforcement ends, by providing opportunities to destroy or conceal evidence, or otherwise thwarting the CFTC's investigation of alleged wrongdoing.'' [148] This commenter also expressed belief that ''the Commission's approach of encouraging whistleblowers to first report violations internally * * * without penalizing those who do not report, strikes an appropriate balance.'' [149]

Another commenter advised that whistleblowers should be given the option to report problems directly to the Commission, ''especially if they have reason to believe that their entity's internal compliance program will not do an adequate job of investigating the wrongdoing and taking corrective action.'' [150] This commenter also stated that to require internal reporting would be contrary to the meaning and intent of Section 23 of the CEA, would have a chilling effect on the whistleblower program and would put whistleblowers in harm's way.[151]

In the alternative to mandatory internal reporting, several commenters suggested that the Commission make internal reporting a positive criterion in an award determination.[152] For example, one commenter stated that the Commission ''[s]hould make explicit that a whistleblower will receive credit in the calculation of award amount when the [whistleblower] uses a entity's internal reporting mechanism.'' [153] In addition, this commenter suggested that the Final Rule ''should provide strong financial disincentives against individuals who violate entity rules requiring them to report misconduct internally.'' [154] Taking another tack, this commenter suggested that the Commission deem ineligible for an award any individual who refuses to cooperate with the entity's internal investigation, or who provides inaccurate or incomplete information or otherwise hinders such an investigation.[155]

Also, several commenters pointed out that the SEC's whistleblower rules incentivize internal reporting through positive consideration of internal reporting in award determinations,[156] and suggested that the Commission's whistleblower program be harmonized with that of the SEC (harmonization to be discussed below). The SEC's final whistleblower rules include factors that may increase a whistleblower's award.[157]

The Commission declines to mandate that whistleblowers report potential violations internally either before or concurrent to reporting to the Commission. The Commission believes that to require internal reporting could raise the risk of retaliation, and have a chilling effect on whistleblowers who are inclined to come forward and bring information to the attention of the Commission.[158] For these same reasons, the Commission has decided not to deem lack of cooperation with an internal investigation a basis to render a person ineligible for an award.

Nonetheless, the Commission recognizes that internal whistleblower, compliance and legal systems can contribute to detecting, deterring and preventing misconduct including violations of the CEA, goals that are consistent with the Commission's mission. Many entities properly encourage their employees to use such functions to report misconduct internally. By establishing financial incentives to report misconduct to the Commission, the Commission does not want to discourage employees from making internal reports when appropriate. The Commission recognizes that internal compliance and reporting systems ought to contribute to the goal of detecting, deterring and preventing misconduct, including CEA violations, and does not want to discourage employees from using such systems when they are in place.

The Commission is striking an appropriate balance between the interests of maintaining strong internal reporting functions and the interests of the Commission's whistleblower program by tailoring the Final Rules in two respects. First, the Final Rules state that the Commission will consider the whistleblower's decision to report internally as a potentially positive factor in the Commission's award determination. Whether the decision to report internally increases the amount of the award will depend on the facts and circumstances. If the whistleblower chooses not to report internally, his award determination will be unaffected by that decision. Indeed, the Commission recognizes that a whistleblower may reasonably believe that reporting internally could risk retaliation or be counterproductive to preventing and/or remedying misconduct; but such a whistleblower should be no less incentivized to report to the Commission. Second, if a whistleblower reports information internally within an entity, according to the Final Rules the Commission will attribute to the whistleblower all information later reported by the entity to the Commission, including any additional information reported by the entity that was not part of the whistleblower's internal report.

In response to this possibility, the Commission has tailored the Final Rules to provide whistleblowers who are otherwise pre-disposed to report internally, but who may also be affected by financial incentives, with additional economic incentives to continue to report internally. Specifically, after considering the comments received, the Commission has decided to revise and adopt the Proposed Rules to incentivize internal reporting, as discussed throughout this Release, specifically by providing whistleblowers who report internally with: (a) Positive weight in Commission award determinations; [159] and (b) the benefit of the employer's

[146] *See* letter from U.S. Chamber of Commerce.

[147] *See* letter from SIFMA/FIA.

[148] *See* letter from TAF.

[149] *See* letter from TAF.

[150] *See* letter from POGO.

[151] *See* letter from POGO.

[152] *See* letter from FSR at 8; *see also* letters from NSCP at 3–7, 10, Senator Carl Levin at 3, U.S. Chamber of Commerce at 14, SIFMA/FIA at 2–3, 6; *cf.* letter from FSR at 9 (suggesting that whistleblowers who fail to report internally ''without clear, appropriate justification'' be limited, in general, to the ''statutory minimum of 10 percent of the total monetary sanctions collected in the action.'').

[153] *See* letter from SIFMA/FIA.

[154] *See* letter from SIFMA/FIA.

[155] *See* letter from SIFMA/FIA.

[156] *See, e.g.,* letter from SIFMA/FIA.

[157] *See* SEC Rule 240.21F–6(a)(4) (''Criteria For Determining Amount of Award'').

[158] *See* letter from POGO.

[159] *See* Rule 165.9 Criteria for determining amount of award.

investigation.[160] The Commission has decided not to deem ineligible a person for an award who does not cooperate with an internal investigation because the Commission has previously indicated that the Commission will take into consideration the degree to which a whistleblower took steps to prevent the violations from occurring, or continuing, when making an award determination.[161]

Commission staff has consulted with SEC staff regarding drafting of rules to implement the Commission's and SEC's respective Dodd-Frank Act whistleblower provisions, Section 748 (Commodity Whistleblower Incentives and Protection) and Section 922 (Whistleblower Protection). Several commenters noted that some companies may be subject to both whistleblower programs, and to reduce uncertainty and cost to these companies the respective whistleblower programs should be as uniform as possible.[162] Wherever appropriate and consistent with the underlying statutory mandate in Section 23 of the CEA, the Commission has endeavored to harmonize its whistleblower rules with those of the SEC.

However, the CFTC's Proposed Rules and SEC's Final Rules are similar but not identical due to a number of factors, including the following: (1) While similar, the provisions of the Sections 748 and 922 are not identical; (2) certain terms in the SEC's statutory provision are either defined terms under the Securities Exchange Act of 1934 or are terms of art under SEC case law, and there is no comparable CFTC precedent; (3) unlike the CFTC, the SEC has an existing whistleblower program for insider trading violations that was established under Section 21A(e) of the Securities Exchange Act of 1934, 15 U.S.C. 78u–1(e); and (4) also unlike the CFTC, the SEC has existing obligations for persons to report violations to it (*see, e.g.,* Section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1 (establishing requirements and procedure for a ''registered public accounting firm [that] detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the financial statements of the issuer) has or may have occurred'' to report such illegal act to management, board of directors, and the SEC) (alteration in original)).

III. Administrative Compliance

A. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before promulgating a regulation.[163] Furthermore, such costs and benefits shall be evaluated in light of the following five considerations: (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. The Commission may in its discretion give greater weight to any one of the five enumerated areas depending upon the nature of the regulatory action.[164]

The Final Rules implement Section 23 of the CEA which requires the Commission, subject to certain requirements, to pay eligible whistleblowers a monetary award for voluntarily providing original information about violations of the CEA leading to a successful enforcement action. The Final Rules define the key terms, specify procedures for the submission and handling of original information, and enumerate procedures for consideration and payment of awards including appeals.

Many of the Final Rules are mandated by section 748 of the Dodd-Frank Act, leaving the Commission with little or no discretion to consider any alternatives where the statute prescribes particular procedures. Therefore, the Commission's final regulations adhere closely to the enabling language of the statute. For example, the final regulations implement, among other provisions, the statutory requirement that, if all preconditions are met, the Commission must pay an award to one or more whistleblowers in an aggregate amount of not less than 10 percent and not more than 30 percent of what has been collected of the monetary sanctions imposed in the Commission's action or related actions. Another example is the statutory requirement that anonymous whistleblowers must be represented by counsel when making a claim for a whistleblower award. To the extent that the Commission was left with discretion under section 748 of the Dodd-Frank Act, the Commission exercised that discretion with consideration of minimizing the potential costs while maintaining fidelity to the Congressional intent behind section 748 of the Dodd-Frank Act.

The Commission has considered the costs and benefits of its regulations as part of the deliberative rulemaking process, and discussed them throughout the preamble. The Commission generally views the costs-benefits section of this Final Rulemaking to be an extension of that discussion. Paperwork Reduction Act related costs are included in the overall compliance costs considered with respect to Final Rule 165.

The comments that the Commission received regarding costs and benefits can be categorized under three major topics. Broadly speaking, the comments assert that (1) Employers and the CFTC will face increased costs because the Final Rule does not contain a requirement that a whistleblower first report an alleged CEA violation internally to the entity committing the alleged offense; (2) firms regulated by both the CFTC and the SEC will face increased costs due to the lack of regulatory harmonization between the CFTC and SEC whistleblower rules; and (3) potential whistleblowers will face costs excessive procedural burdens under the rules.

A discussion of the comments on each topic and the Commission's response to those comments in light of the five public interest considerations follows.

1. Costs to Employers and the Commission Associated With the Lack of an Internal Reporting Requirement

Three commenters[165] commented specifically on the cost-benefit section of the Proposed Rules, stating that the cost-benefit section of the Proposed Rules only described costs to whistleblowers and did not describe costs to employers and the Commission that would arise under the Proposed Rules. One commenter stated that the anti-retaliation provision would lead to false or spurious whistleblower claims and that firms and the Commission would incur significant costs to evaluate these claims.[166] Another commenter stated that two types of costs to employers would be incurred by not requiring whistleblowers to report to the firm's compliance department.[167] According to that commenter, the costs of responding to Commission investigations exceed the costs of internal investigations. In addition, the

[160] *See* Rule 165.2(i) (''Information that led to successful enforcement'').

[161] *See* 75 FR at 75739.

[162] *See* letters from NSCP at 2, ABA at 4, ICI at 1, SIFMA/FIA at 14.

[163] 7 U.S.C. 19(a).

[164] *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 (D.C. Cir. 1985) (noting that an agency has discretion to weigh factors in undertaking cost-benefit analysis).

[165] *See* letters from ABA, EEI, and U.S. Chamber of Commerce.

[166] *See* letter from ABA.

[167] *See* letter from EEI.

commenter stated that the lack of an internal reporting requirement would give rise to meritless complaints which would be costly to investigate. Further, though not specifically enumerated in its analysis of the cost-benefit section, that commenter stated that the proposed rule would likely result in slower identification, investigation, and potentially remediation by employers of alleged violations. Another commenter also stated that the lack of an internal reporting requirement would increase employer costs.[168] The common theme in the above cost-benefit comments, as well as other more general cost comments submitted by several commenters [169] focused on the potential damage to existing compliance systems without an internal reporting requirement. While not specifically commenting on the cost-benefit section of the Proposed Rules, several commenters noted increased legal, investigative, and remedial costs to firms and increased costs to and use of resources by the Commission.[170] One of the commenters expanded upon potential costs and negative consequences of the lack of a rule requiring, at a minimum, concurrent reporting to the firm. This commenter stated that ''a failure or delay in the communication of whistleblower reports of potential violations to these entities may reduce the entity's ability of their independent accountants to rely on the efficacy of an entity's internal control systems and could adversely impact the entity's and independent accountants' evaluations of internal control over financial reporting.[171] It could have significant negative consequences for investors, reporting entities, and the audit process alike.'' These concerns are addressed below in the context of the above mentioned Section 15(a) considerations.

Considerations of Protection of Market Participants and the Public

The Commission believes that the Final Rules implement the statutory mandate and serve the purpose of protecting market participants and the public. The statute does not require whistleblowers to report violations through an entity's internal reporting process. To impose such a requirement may be inconsistent with Congressional intent in establishing the whistleblower program. Specifically, the Commission believes that this potential alternative would impose substantial costs and burdens on whistleblowers, victims of CEA violations, market participants, and the public. Such a rule could prevent or deter whistleblowers from making legitimate complaints out of fear of reprisal from their employer. Consequently, some violations may never be brought to the attention of the Commission, which would prevent the Commission from bringing actions against violators of the CEA. A rule requiring internal reporting could therefore deprive victims of restitution and could deprive market participants and the public of the benefits associated with detection, prosecution, and deterrence of such violations of the CEA. Thus, the Commission believes that the overall cost of an internal reporting requirement and the attendant risks of undetected violations are greater than the cost to firms subject to a potential whistleblower referral. Indeed, if Congress thought such a requirement was necessary, Congress could have incorporated such a provision in Section 748 of the Dodd Frank Act. Regarding the comment that the anti-retaliation provision of Section 748 would lead to more meritless complaints, the Commission notes that Section 748 of the Dodd-Frank Act prohibits retaliation against whistleblowers for any lawful act done by the whistleblower. Because the Final Rules implement this statutory mandate, the commenter did not provide any basis for claiming that the language of the proposed rule will cause such consequences under the statutory provision.

The whistleblower program is distinct from and does not undermine or require any changes to any entity's existing compliance systems. However, the Commission is cognizant that firms may be incentivized to re-evaluate and adjust their existing internal compliance systems to encourage employees to report internally and forestall the occurrence of CEA violations.

While the Commission is not persuaded of the need to adopt a rule to require internal reporting, after consideration of the comments on internal reporting, the Commission has included incentives for internal reporting in Final Rule 165.2(i) and 165.9. The Commission has determined that the risk of meritless complaints is outweighed by the benefits of a Final Rule that enables whistleblowers to make referrals without fear of retaliation. Regarding the comment that the lack of an internal reporting requirement would likely result in slower identification, investigation, and potential remediation of violations by firms, the Commission will evaluate whistleblower referrals promptly and take action as necessary and appropriate. The comment does not illustrate how and to what extent the lack of an internal reporting requirement undermines existing compliance protocols. The whistleblower program, by definition, is an external reporting regime. To the extent there is a delay in the entity learning of violations and taking corrective measures in the absence of internal reporting, the cost of such a delay is outweighed by the risks of discouraging meritorious claims.

Considerations of Efficiency, Competitiveness, and Financial Integrity of Futures Markets, Price Discovery, and Sound Risk Management Practices

The Commission has determined that its Final Rules implement Congressional intent. After consideration and evaluation of the public comments, and to the extent the Commission declines to impose an additional internal reporting requirement upon whistleblowers beyond the statutory mandate under section 748 of the Dodd-Frank Act, the Commission has determined that the Final Rules will further the goals of each of these three considerations under Section 15(a) of the CEA. For example, to the extent whistleblowers are incentivized to refer cases of market manipulation and disruptive trading practices, the efficiency, competitiveness and financial integrity of futures markets, the price discovery process, and effective risk management will be enhanced by improved detection and enforcement of such violations. The Commission is not persuaded by, nor was there any reliable evidence to support, assertions that the Commission and affected parties will bear excess costs due to a high volume of meritless claims in the absence of an internal reporting requirement. Congress placed a procedural safeguard in the statute by advising whistleblowers that they can be criminally prosecuted for making false statements to the Commission under 18 U.S.C. 1001.[172] These and other provisions will reduce the risk of meritless referrals. Moreover, whistleblowers are incentivized to provide referrals only if they believe those referrals have merit since they can only get an award if their referrals lead

[168] *See* letter from U.S. Chamber of Commerce.

[169] *See* letters from SIFMA/FIA, EEAC, Working Group, AICPA, and NSCP.

[170] *See* letters from NSCP, Working Group, EEAC and AICPA.

[171] *See* letter from AICPA.

[172] Such false statements also could be a violation of Sections 6(c)(2) and 9(a)(3) of the CEA, 7 U.S.C. 9, 13(a)(3), 15.

to a successful enforcement action (*see* Rules 165.2(i) and 165.9.).

2. Costs to Firms Regulated by Both the Commission and SEC

One commenter stated that the lack of regulatory harmonization between the Commission and SEC whistleblower rules would ''impose costs and lead to the potential for confusion for dually-regulated firms without any corresponding benefit.'' [173] Another commenter stated that Commission-SEC harmonization would benefit ''dually registered firms [and] the financial industry generally.'' [174] In addition, another commenter stated that the Proposed Rules are ''inconsistent with the framework of compliance processes established under Sarbanes-Oxley and other federal laws and regulations.'' This commenter further stated the importance of harmonizing the implementation of the Dodd-Frank Act with existing processes.[175] We address each of these concerns below in the context of the above mentioned Section 15(a) considerations.

The Commission has considered the public comments calling for harmonization with SEC whistleblower rules. The Dodd-Frank Act does not require harmonization between the Commission and the SEC with respect to their respective whistleblower provisions. Moreover, this is not a joint Commission-SEC rulemaking. Having considered the comments and consulted with SEC staff, the Commission has revised several whistleblower rules, as discussed in detail under Section II.S. above, with those of the SEC's whistleblower rules to enhance regulatory certainty for market participants subject to both whistleblower programs, which furthers the public interest.[176]

With respect to costs, as explained in various places throughout this release, the remaining differences between the SEC and Commission rules are due to differences between the statutes governing the two agencies and their respective regulatory objectives. Consequently, costs associated with these remaining differences are not likely to be significant under the five broad areas as enumerated in Section 15(a) of the CEA.

3. Costs to Whistleblowers

A commenter stated that the proposed claims process is burdensome and backwards. Specifically, this commenter noted that it is problematic to require that a whistleblower notify the Commission of a claim for reward upon the successful completion of an enforcement action. The commenter also recommended that the Commission notify the individual about a reward after an administrative or judicial action has been taken.[177] Another commenter shared similar concerns and stated that the Commission should establish better policies for communicating with whistleblowers throughout the application process to lessen whistleblowers' burden to explain the importance of their disclosures.[178] We address each of these concerns below in the context of Section 15(a) considerations.

Protection of Market Participants and the Public Considerations of Efficiency, Competitiveness, and Financial Integrity of Futures Markets, Price Discovery, and Sound Risk Management Practices

The Final Rules implement procedures mandated by section 748 of the Dodd-Frank Act for whistleblowers to report CEA violations. The Commission is aware of the concerns expressed by Commenters and intends to implement policies and procedures for communicating with whistleblowers that will address these concerns. Specifically, following the successful completion of a covered action, the Commission will publish a Notice of Covered Action on the Commission web site. Whistleblowers will be able to utilize the Commission's Email Subscriptions service [179] to receive an email message when their actions are resolved successfully. The Final Rules also reduce the number of forms that a whistleblower must submit to the Commission from three to two.

The Commission has considered the paperwork requirements in light of all five of the considerations in Section 15(a) of the CEA. With respect to benefits, the procedural requirements under the Final Rule will enable the Commission to effectively implement and administer the mandated whistleblower program in furtherance of these considerations without imposing excessive costs or burdens upon whistleblowers.

B. Anti-Trust Considerations

Section 15(b) of the CEA [180] requires the Commission to consider the public interests protected by the antitrust laws and to take actions involving the least anti-competitive means of achieving the objectives of the CEA. The Commission believes that the Proposed Rules will have a positive effect on competition by improving the fairness and efficiency of the markets through improving detection and remediation of potential violations of the CEA and Commission regulations.

IV. Paperwork Reduction Act

Certain provisions of the Proposed Rules contained ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (''PRA'') of 1995.[181] An agency may not sponsor, conduct, or require a response to an information collection unless a currently valid Office of Management and Budget (''OMB'') control number is displayed. The Commission submitted proposed collections of information to OMB for review in accordance with the PRA.[182] The titles for the collections of information were: (1) Form TCR (Tip, Complaint or Referral); (2) Form WB–DEC (Declaration Concerning Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act); and (3) Form WB–APP (Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act). These three forms were proposed to implement Section 23 of the CEA. The proposed forms allowed a whistleblower to provide information to the Commission and its staff regarding: (1) Potential violations of the CEA; and (2) the whistleblower's eligibility for and entitlement to an award.

The Commission did not receive any comments that directly addressed its PRA analysis or its burden estimates. In comments on the Proposing Release, a commenter suggested that the three-form process proposed for obtaining information from whistleblowers was burdensome.[183] As the Commission discusses in connection with Rule 165.3, its Final Rules require largely the same information to be collected, but in response to comments the Commission has combined the information collection

[173] *See* letter from SIFMA/FIA.

[174] *See* letter from NSCP.

[175] *See* letter from EEI.

[176] Similar to the SEC, the Commission is not persuaded by the commenter's suggestion that the Proposed Rules were inconsistent with the Sarbanes-Oxley Act of 2002. *See* 76 FR at 34326 n.230 (the SEC concluded that the mandates of Section 301 of the Sarbanes-Oxley Act of 2002 and Section 21F of the Securities Exchange Act of 1934 were different and declined to follow the commenters' suggestion that the SEC impose a ''requirement that employees of listed companies also utilize internal audit committee or other complaint procedures.'').

[177] *See* letter from TAF.

[178] *See* letter from POGO.

[179] *See https://service.govdelivery.com/service/multi_subscribe.html?code=USCFTC.*

[180] 7 U.S.C. 19(b).

[181] 44 U.S.C. 3501 *et seq.*

[182] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[183] *See* letter from NWC.

into only two forms—Form TCR, which incorporates several questions previously posed on Proposed Form WB–DEC, and Form WB–APP—to simplify the process for whistleblowers.

A. Summary of Collection of Information

Form TCR, submitted pursuant to Rule 165.3, requests the following information:

1. Background information regarding each complainant submitting the TCR, including the person's name and contact information. The Commission has added a section for the identification of additional complainants;

2. If the complainant is represented by an attorney, the name and contact information for the complainant's attorney;

3. Information regarding the individual or entity that is the subject of the tip or complaint, including contact information;

4. Information regarding the tip or complaint, including: the date of the alleged violation; the nature of the complaint; the name and type of financial product or investment, if relevant; whether the complainant or counsel has had prior contact with Commission staff and with whom; whether information has been communicated to another agency and, if so, details about that communication, including the name and contact information for the point of contact at such agency, if available; whether the complaint relates to an entity of which the complainant is or was an officer, director, counsel, employee, consultant or contractor; whether the complainant has reported this violation to his or her supervisor, compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations and the date of such action was taken;

5. A description of the facts pertinent to the alleged violation, including an explanation of why the complainant believes the acts described constitute a violation of the CEA;

6. A description of all supporting materials in the complainant's possession and the availability and location of any additional supporting materials not in the complainant's possession;

7. An explanation of how the person submitting the complaint obtained the information and, if any information was obtained from an attorney or in a communication where an attorney was present, the identification of any such information;

8. A description of any information obtained from a public source and a description of such source;

9. A description of any documents or other information in the complainant's submission that the complainant believes could reasonably be expected to reveal his or her identity, including an explanation of the basis for the complainant's belief that his or her identity would be revealed if the documents were disclosed to a third party; and

10. Any additional information the complainant believes may be relevant.

Also included in Form TCR are several items previously included in proposed Form WB–DEC, which was required to be submitted pursuant to Proposed Rule 165.3. First, there are several questions that require a complainant to provide eligibility-related information by checking a series of ''yes/no'' answers. Second, the form contains a declaration, signed under penalty of perjury, that the information provided to the Commission pursuant to Rule 165.3 is true, correct and complete to the best of the person's knowledge, information and belief. Third, there is a counsel certification, which is required to be executed in instances where a complainant makes an anonymous submission pursuant to the whistleblower program and is represented by an attorney. This statement certifies that the attorney has verified the complainant's identity, and has reviewed the complainant's completed and signed Form TCR for completeness and accuracy, and that the information contained therein is true, correct and complete to the best of the attorney's knowledge, information and belief. The certification also contains new statements, which were not included in proposed Form WB–DEC, that: (i) The attorney has obtained the complainant's non-waivable consent to provide the Commission with the original completed and signed Form TCR in the event that the Commission requests it due to concerns that the form may contain false, fictitious or fraudulent statements or representations that were knowingly or willfully made by the complainant; and (ii) the attorney consents to be legally obligated to provide the signed Form TCR within seven (7) calendar days of receiving such request from the Commission.

Form WB–APP, submitted pursuant to Rule 165.7, requires the following information:

1. The applicant's name, address and contact information;

2. The applicant's social security number, if any;

3. If the person is represented by an attorney, the name and contact information for the attorney;

4. Details concerning the tip or complaint, including (a) The manner in which the information was submitted to the Commission, (b) the subject of the tip, complaint or referral, (c) the Form TCR number, and (d) the date the Form TCR was submitted to the Commission;

5. Information concerning the Notice of Covered Action to which the claim relates, including (a) The date of the Notice, (b) the Notice number, and (c) the case name and number;

6. For related actions, (a) The name and contact information for the agency or organization to which the person provided the original information, (b) the date the person provided this information, (c) the date the agency or organization filed the related action, (d) the case name and number of the related action, and (e) the name and contact information for the point of contact at the agency or organization, if known;

7. A series of questions concerning the person's eligibility to receive an award as described in the Form TCR discussion above;

8. An optional explanation of the reasons why that the person believes he is entitled to an award in connection with his submission of information to the Commission, or to another agency in a related action, including any additional information and supporting documents that may be relevant in light of the criteria for determining the amount of an award set forth in Rule 165.9, and any supporting documents; and

9. A declaration, signed under penalty of perjury, that the information provided in Form WB–APP is true, correct and complete to the best of the person's knowledge, information and belief.

B. Use of Information

The collection of information on Forms TCR and WB–APP will be used to permit the Commission and its staff to collect information from whistleblowers regarding alleged violations of the CEA and the rules and regulations thereunder and to determine claims for whistleblower awards.

C. Respondents

The likely respondents to Form TCR will be individuals who wish to provide information relating to possible violations of the CEA and the rules and regulations thereunder, and who wish to be eligible for whistleblower awards. The likely respondents to Form WB–APP will be individuals who have provided the Commission, or another

agency in a related action, with information relating to a possible violation of the CEA and who believe they are entitled to an award.

D. Total Annual Reporting and Recordkeeping Burden

1. Form TCR

The Commission estimates that it will receive submissions of approximately 3,800 tips, complaints and referrals each year.[184] Of those 3,800 submissions, the Commission estimates that it will receive approximately 100 whistleblower tips, complaints and referrals on Form TCR each year.[185] Each respondent would submit only one Form TCR and would not have a recurring obligation to file additional Forms TCR. In the Proposing Release, the Commission proposed that a whistleblower would have to complete two forms, proposed Form TCR and proposed Form WB–DEC, to be eligible for an award. In the Final Rules, the Commission has eliminated Form WB–DEC and added the eligibility questions from that proposed form to Form TCR.

The Commission estimates that it will take a whistleblower, on average, two and one-half hours to complete the Form TCR, which includes the questions that had previously been included in proposed Form WB–DEC. The completion time will depend largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of the allegations. As a result, the Commission estimates that the annual PRA burden of Form TCR is 250 hours.

2. Form WB–APP

Each whistleblower who believes that he is entitled to an award because he provided original information to the Commission that led to successful enforcement of a covered judicial or administrative action, or a related action, is required to submit a Form WB–APP to be considered for an award. The Commission estimates that it will receive approximately nine Forms WB–APP each year.[186] Finally, the Commission estimates that it will take a whistleblower, on average, ten hours to complete Form WB–APP. The completion time will depend largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of his application for an award. This estimate assumes that most whistleblowers will elect to complete optional Section G (Entitlement to Award) of Form WB–APP. As a result, the Commission estimates that the annual PRA burden of Form WB–APP is 90 hours.

3. Involvement and Cost of Attorneys

Under the Proposed Rules, an anonymous whistleblower is required (when filing a claim for an award), and a whistleblower whose identity is known may elect to retain counsel to represent the whistleblower in the whistleblower program. The Commission expects that, in most of those instances, the whistleblower's counsel will complete, or assist in the completion, of some or all of the required forms on behalf of the whistleblower. The Commission also expects that in the vast majority of cases in which a whistleblower is represented by counsel, the whistleblower will enter into a contingency fee arrangement with counsel, providing that counsel will be paid for the representation through a fixed percentage of any recovery by the whistleblower under the program. Thus, most whistleblowers will not incur any direct, quantifiable expenses for attorneys' fees for the completion of the required forms.

The Commission anticipates that a small number of whistleblowers (no more than five percent) will enter into hourly fee arrangements with counsel.[187] In those cases, a whistleblower will incur direct expenses for attorneys' fees for the completion of the required forms. To estimate those expenses, the Commission makes the following assumptions:

1. The Commission will receive approximately 100 Forms TCR, and nine Forms WB–APP annually; [188]

2. Whistleblowers will pay hourly fees to counsel for the submission of approximately five Forms TCR and one Form WB–APP annually; [189]

3. Counsel retained by whistleblowers pursuant to an hourly fee arrangement will charge on average $400 per hour; [190] and

4. Counsel will bill on average: (a) 2.5 hours to complete a Form TCR, and (b) 10 hours to complete a Form WB–APP. Based on those assumptions, the Commission estimates that each year whistleblowers will incur the following total amounts of attorneys' fees for completion of the whistleblower program forms: (i) $5,000 for the completion of Forms TCR; and (ii) $4,000 for the completion of Form WB–APP.

E. Mandatory Collection of Information

A whistleblower would be required to complete a Form TCR, or submit his information electronically, and a Form WB–APP, or submit his information electronically, to qualify for a whistleblower award.

F. Confidentiality

As explained above, the statute provides that the Commission must maintain the confidentiality of the identity of each whistleblower, subject to certain exceptions. Section 23(h)(2) of the CEA states that, except as expressly provided:

> [T]he Commission, and any officer or employee of the Commission, shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission [or certain specific entities listed in paragraph (C) of Section 23(h)(2)].

Section 23(h)(2) also allows the Commission to share information received from whistleblowers with certain domestic and foreign regulatory and law enforcement agencies. However, the statute requires the domestic entities to maintain such

[184] This number is a staff estimate based upon the volume of tips, complaints or referrals received by the Commission in recent years.

[185] This number is a staff estimate based on the volume of whistleblower tips, complaints and referrals that the Commission has received in the first eleven months after the enactment of the Dodd-Frank Act (less than two dozen) and an expectation that this volume will increase as the public becomes more aware of the Commission's whistleblower program.

[186] This number is a staff estimate based on two expectations: First, that the Commission will receive Forms WB–APP in approximately 15 percent of cases in which it posts a Notice of Covered Action because the Commission expects that the Commission will continue to bring a substantial number of enforcement cases that are not based on whistleblower information; and second, that the Commission will receive approximately three Forms WB–APP in each of those cases. Because this is a new program, the staff does not have prior relevant data on which it can base these estimates.

[187] This estimate is based, in part, on the Commission's belief that most whistleblowers likely will not retain counsel to assist them in preparing the forms.

[188] The basis for these assumed amounts are explained in Parts IV.D.1. and I.V.D.2. above.

[189] These amounts are based on the assumption, as noted above, that no more than five percent of all whistleblowers will be represented by counsel pursuant to an hourly fee arrangement.

[190] The Commission uses this hourly rate for estimating the billing rates of lawyers for purposes of other rules. Absent historical data for the Commission to rely upon in connection with the whistleblower program, the Commission believes that this billing rate estimate is appropriate, recognizing that some attorneys representing whistleblowers may charge different average hourly rates.

information as confidential, and requires foreign entities to maintain such information in accordance with such assurances of confidentiality as the Commission deems appropriate.

In addition, Section 23(d)(2) provides that a whistleblower may submit information to the Commission anonymously, so long as the whistleblower is represented by counsel when the time comes for the whistleblower to make a claim for an award. However, the statute also provides that a whistleblower must disclose his or her identity prior to receiving payment of an award.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [191] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[192] In the Commission's Proposing Release, the Chairman, on behalf of the Commission, certified that a regulatory flexibility analysis is not required because the persons that would be subject to the rules—individuals—are not ''small entities'' for purposes of the Regulatory Flexibility Act and the rules therefore would not have a significant economic impact on a substantial number of small entities. The Commission received no comments regarding this conclusion.

VI. Statutory Authority

The Commission is adopting the rules and forms contained in this document under the authority contained in Sections 2, 5, 8a(5) and 23 of the Commodity Exchange Act.

List of Subjects in 17 CFR Part 165

Whistleblowing.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, in particular, Sections 2, 5, 8a(5) and 23 thereof, the Commodity Futures Trading Commission adds a new 17 CFR Part 165 as set forth below:

PART 165—WHISTLEBLOWER RULES

Sec.

Authority: 7 U.S.C. 2, 5, 12a(5) and 26, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 16, 2010).

§ 165.1 General.

Section 23 of the Commodity Exchange Act, entitled ''Commodity Whistleblower Incentives and Protection,'' requires the Commission to pay awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about violations of the Commodity Exchange Act. This part 165 describes the whistleblower program that the Commission intends to establish to implement the provisions of Section 23, and explains the procedures the whistleblower will need to follow in order to be eligible for an award. Whistleblowers should read these procedures carefully, because the failure to take certain required steps within the time frames described in this part may result in disqualification from receiving an award. Unless expressly provided for in this part, no person is authorized to make any offer or promise, or otherwise to bind the Commission with respect to the payment of any award or the amount thereof.

§ 165.2 Definitions.

As used in this part:

(a) *Action.* The term ''action'' generally means a single captioned judicial or administrative proceeding. Notwithstanding the foregoing:

(1) For purposes of making an award under § 165.7, the Commission will treat as a Commission action two or more administrative or judicial proceedings brought by the Commission if these proceedings arise out of the same nucleus of operative facts; or

(2) For purposes of determining the payment on an award under § 165.14, the Commission will deem as part of the Commission action upon which the award was based any subsequent Commission proceeding that, individually, results in a monetary sanction of $1,000,000 or less, and that arises out of the same nucleus of operative facts.

(b) *Aggregate amount.* The phrase ''aggregate amount'' means the total amount of an award granted to one or more whistleblowers pursuant to § 165.8.

(c) *Analysis.* The term ''analysis'' means the whistleblower's examination and evaluation of information that may be generally available, but which reveals information that is not generally known or available to the public.

(d) *Collected by the Commission.* The phrase ''collected by the Commission'' refers to any funds received, and confirmed by the U.S. Department of the Treasury, in satisfaction of part or all of a civil monetary penalty, disgorgement obligation, or fine owed to the Commission.

(e) *Covered judicial or administrative action.* The phrase ''covered judicial or administrative action'' means any judicial or administrative action brought by the Commission under the Commodity Exchange Act whose successful resolution results in monetary sanctions exceeding $1,000,000.

(f) *Fund.* The term ''Fund'' means the Commodity Futures Trading Commission Customer Protection Fund.

(g) *Independent knowledge.* The phrase ''independent knowledge'' means factual information in the whistleblower's possession that is not generally known or available to the public. The whistleblower may gain independent knowledge from the whistleblower's experiences, communications and observations in the whistleblower's personal business or social interactions. The Commission will not consider the whistleblower's information to be derived from the whistleblower's independent knowledge if the whistleblower obtained the information:

(1) From sources generally available to the public such as corporate filings and the media, including the Internet;

(2) Through a communication that was subject to the attorney-client privilege, unless the disclosure is

[191] 5 U.S.C. 601, *et seq.*

[192] *Id.*

otherwise permitted by the applicable federal or state attorney conduct rules;

(3) In connection with the legal representation of a client on whose behalf the whistleblower, or the whistleblower's employer or firm, have been providing services, and the whistleblower seek to use the information to make a whistleblower submission for the whistleblower's own benefit, unless disclosure is authorized by the applicable federal or state attorney conduct rules;

(4) Because the whistleblower was an officer, director, trustee, or partner of an entity and another person informed the whistleblower of allegations of misconduct, or the whistleblower learned the information in connection with the entity's processes for identifying, reporting, and addressing possible violations of law;

(5) Because the whistleblower was an employee whose principal duties involved compliance or internal audit responsibilities; or

(6) By a means or in a manner that is determined by a United States court to violate applicable Federal or state criminal law.

(7) *Exceptions.* Paragraphs (g)(4) and (5) of this section shall not apply if:

(i) The whistleblower has a reasonable basis to believe that disclosure of the information to the Commission is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors;

(ii) The whistleblower has a reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the misconduct; or

(iii) At least 120 days have elapsed since the whistleblower provided the information to the relevant entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or the whistleblower's supervisor, or since the whistleblower received the information, if the whistleblower received it under circumstances indicating that the entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or the whistleblower's supervisor was already aware of the information.

(h) *Independent analysis.* The phrase ''independent analysis'' means the whistleblower's own analysis, whether done alone or in combination with others.

(i) *Information that led to successful enforcement.* The Commission will consider that the whistleblower provided original information that led to the successful enforcement of a judicial or administrative action, or related action, in the following circumstances:

(1) The whistleblower gave the Commission original information that was sufficiently specific, credible, and timely to cause the Commission staff to commence an examination, open an investigation, reopen an investigation that the Commission had closed, or to inquire concerning different conduct as part of a current examination or investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of the whistleblower's original information; or

(2) The whistleblower gave the Commission original information about conduct that was already under examination or investigation by the Commission, the Congress, any other authority of the federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, futures association or the Public Company Accounting Oversight Board (except in cases where the whistleblower was an original source of this information as defined in paragraph (i) of this section), and the whistleblower's submission significantly contributed to the success of the action.

(3) The whistleblower reported original information through an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time the whistleblower reported them to the Commission; the entity later provided the whistleblower's information to the Commission, or provided results of an audit or investigation initiated in whole or in part in response to information the whistleblower reported to the entity; and the information the entity provided to the Commission satisfies either paragraph (i)(1) or (i)(2) of this section. Under this paragraph (i)(3), the whistleblower must also submit the same information to the Commission in accordance with the procedures set forth in § 165.3 within 120 days of providing it to the entity.

(j) *Monetary sanctions.* The phrase ''monetary sanctions,'' when used with respect to any judicial or administrative action, or related action, means—

(1) Any monies, including penalties, disgorgement, restitution, and interest ordered to be paid; and

(2) Any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)) as a result of such action or any settlement of such action.

(k) *Original information.* The phrase ''original information'' means information that—

(1) Is derived from the independent knowledge or independent analysis of a whistleblower;

(2) Is not already known to the Commission from any other source, unless the whistleblower is the original source of the information;

(3) Is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information; and

(4) Is submitted to the Commission for the first time after July 21, 2010 (the date of enactment of the Wall Street Transparency and Accountability Act of 2010).

(5) Original information shall not lose its status as original information solely because the whistleblower submitted such information prior to October 24, 2011, provided such information was submitted after July 21, 2010, the date of enactment of the Wall Street Transparency and Accountability Act of 2010. In order to be eligible for an award, a whistleblower who submits original information to the Commission after July 21, 2010, but prior to October 24, 2011, must comply with the procedure set forth in § 165.3(d).

(l) *Original source.* The whistleblower must satisfy the whistleblower's status as the original source of information to the Commission's satisfaction.

(1) *Information obtained from another source.* The Commission will consider the whistleblower to be an ''original source'' of the same information that the Commission obtains from another source if the information the whistleblower provide satisfies the definition of original information and the other source obtained the information from the whistleblower or the whistleblower's representative.

(i) In order to be considered an original source of information that the Commission receives from Congress, any other federal, state or local authority, or any self-regulatory organization, the whistleblower must have voluntarily given such authorities the information within the meaning of this part. In determining whether the whistleblower is the original source of information, the Commission may seek assistance and confirmation from one of the other entities or authorities described above.

(ii) In the event that the whistleblower claims to be the original source of

information that an authority or another entity, other than as set forth in paragraph (l)(1)(i) of this section, provided to the Commission, the Commission may seek assistance and confirmation from such authority or other entity.

(2) *Information first provided to another authority or person.* If the whistleblower provides information to Congress, any other federal or state authority, a registered entity, a registered futures association, a self-regulatory organization, or to any of any of the persons described in paragraphs (g)(4) and (5) of this section, and the whistleblower, within 120 days, make a submission to the Commission pursuant to § 165.3, as the whistleblower must do in order for the whistleblower to be eligible to be considered for an award, then, for purposes of evaluating the whistleblower's claim to an award under § 165.7, the Commission will consider that the whistleblower provided original information as of the date of the whistleblower's original disclosure, report, or submission to one of these other authorities or persons. The whistleblower must establish the whistleblower's status as the original source of such information, as well as the effective date of any prior disclosure, report, or submission, to the Commission's satisfaction. The Commission may seek assistance and confirmation from the other authority or person in making this determination.

(3) *Information already known by the Commission.* If the Commission already knows some information about a matter from other sources at the time the whistleblower makes the whistleblower's submission, and the whistleblower is not an original source of that information, as described above, the Commission will consider the whistleblower an ''original source'' of any information the whistleblower separately provides that is original information that materially adds to the information that the Commission already possesses.

(m) *Related action.* The phrase ''related action,'' when used with respect to any judicial or administrative action brought by the Commission under the Commodity Exchange Act, means any judicial or administrative action brought by an entity listed in § 165.11(a) that is based upon the original information voluntarily submitted by a whistleblower to the Commission pursuant to § 165.3 that led to the successful resolution of the Commission action.

(n) *Successful resolution.* The phrase ''successful resolution,'' when used with respect to any judicial or administrative action brought by the Commission under the Commodity Exchange Act, includes any settlement of such action or final judgment in favor of the Commission. It shall also have the same meaning as ''successful enforcement.''

(o) *Voluntary submission or voluntarily submitted.* (1) The phrase ''voluntary submission'' or ''voluntarily submitted'' within the context of submission of original information to the Commission under this part, shall mean the provision of information made prior to any request from the Commission, Congress, any other federal or state authority, the Department of Justice, a registered entity, a registered futures association, or a self-regulatory organization to the whistleblower or anyone representing the whistleblower (such as an attorney) about a matter to which the information in the whistleblower's submission is relevant. If the Commission or any of these other authorities makes a request, inquiry, or demand to the whistleblower or the whistleblower's representative first, the whistleblower's submission will not be considered voluntary, and the whistleblower will not be eligible for an award, even if the whistleblower's response is not compelled by subpoena or other applicable law. For purposes of this paragraph, the whistleblower will be considered to have received a request, inquiry or demand if documents or information from the whistleblower is within the scope of a request, inquiry, or demand that the whistleblower's employer receives, unless, after receiving the documents or information from the whistleblower, the whistleblower's employer fails to provide the whistleblower's documents or information to the requesting authority in a timely manner.

(2) In addition, the whistleblower's submission will not be considered voluntary if the whistleblower is under a pre-existing legal or contractual duty to report the violations that are the subject of the whistleblower's original information to the Commission, Congress, any other federal or state authority, the Department of Justice, a registered entity, a registered futures association, or a self-regulatory organization, or a duty that arises out of a judicial or administrative order.

(p) *Whistleblower(s).* (1) The term ''whistleblower'' or ''whistleblowers'' means any individual, or two (2) or more individuals acting jointly, who provides information relating to a potential violation of the Commodity Exchange Act to the Commission, in the manner established by § 165.3. A company or another entity is not eligible to be a whistleblower.

(2) *Prohibition against retaliation.* The anti-retaliation protections under Section 23(h) of the Commodity Exchange Act apply whether or not the whistleblower satisfies the requirements, procedures and conditions to qualify for an award. For purposes of the anti-retaliation protections afforded by Section 23(h)(1)(A)(i) of the Commodity Exchange Act, the whistleblower is a whistleblower if:

(i) The whistleblower possess a reasonable belief that the information the whistleblower is providing relates to a possible violation of the CEA, or the rules or regulations thereunder, that has occurred, is ongoing, or is about to occur; and

(ii) The whistleblower provides that information in a manner described in § 165.3.

§ 165.3 Procedures for submitting original information.

A whistleblower's submission of information to the Commission will be a two-step process.

(a) First, the whistleblower will need to submit the whistleblower's information to the Commission. The whistleblower may submit the whistleblower's information:

(1) By completing and submitting a Form TCR online and submitting it electronically through the Commission's Web site at *http://www.cftc.gov;* or

(2) By completing the Form TCR and mailing or faxing the form to the Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Fax (202) 418–5975.

(b) Further, to be eligible for an award, the whistleblower must declare under penalty of perjury at the time the whistleblower submits the whistleblower's information pursuant to paragraph (a)(1) or (2) of this section that the whistleblower's information is true and correct to the best of the whistleblower's knowledge and belief.

(c) Notwithstanding paragraph (b) of this section, if the whistleblower submitted the whistleblower's original information to the Commission anonymously, then the whistleblower's identity must be disclosed to the Commission and verified in a form and manner acceptable to the Commission consistent with the procedure set forth in § 165.7(c) prior to Commission's payment of any award.

(d) If the whistleblower submitted original information in writing to the Commission after July 21, 2010 (the date of enactment of the Wall Street Transparency and Accountability Act of

2010) but before the effective date of these rules, the whistleblower will be eligible for an award only in the event that the whistleblower provided the original information to the Commission in a format or manner other than that described in paragraph (a) of this section, the whistleblower submits a completed Form TCR within 120 days of the effective date of these rules and otherwise follows the procedures set forth above in paragraphs (a) and (b) of this section.

§ 165.4 Confidentiality.

(a) *In general.* Section 23(h)(2) of the Commodity Exchange Act requires that the Commission not disclose information that could reasonably be expected to reveal the identity of a whistleblower, except that the Commission may disclose such information in the following circumstances:

(1) When disclosure is required to a defendant or respondent in connection with a public proceeding that the Commission institutes or in another public proceeding that is filed by an authority to which the Commission provides the information, as described below;

(2) When the Commission determines that it is necessary to accomplish the purposes of the Commodity Exchange Act and to protect customers, it may provide whistleblower information to: The Department of Justice; an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction; a registered entity, registered futures association, or a self-regulatory organization; a state attorney general in connection with a criminal investigation; any appropriate state department or agency, acting within the scope of its jurisdiction; or a foreign futures authority; and

(3) The Commission may make disclosures in accordance with the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Anonymous whistleblowers.* A whistleblower may anonymously submit information to the Commission, however, the whistleblower must follow the procedures in § 165.3(c) for submitting original information anonymously. Such whistleblower who anonymously submits information to the Commission must also follow the procedures in § 165.7(c) in submitting to the Commission an application for a whistleblower award.

§ 165.5 Prerequisites to the consideration of an award.

(a) Subject to the eligibility requirements described in these rules, the Commission will pay an award to one or more whistleblowers who:

(1) Provide a voluntary submission to the Commission;

(2) That contains original information; and

(3) That leads to the successful resolution of a covered Commission judicial or administrative action or successful enforcement of a related action; and

(b) In order to be eligible, the whistleblower must:

(1) Have given the Commission original information in the form and manner that the Commission requires in § 165.3 and be the original source of information;

(2) Provide the Commission, upon its staff's request, certain additional information, including: explanations and other assistance, in the manner and form that staff may request, in order that the staff may evaluate the use of the information submitted; all additional information in the whistleblower's possession that is related to the subject matter of the whistleblower's submission; and testimony or other evidence acceptable to the staff relating to the whistleblower's eligibility for an award; and

(3) If requested by Commission staff, enter into a confidentiality agreement in a form acceptable to the Commission, including a provision that a violation of the confidentiality agreement may lead to the whistleblower's ineligibility to receive an award.

§ 165.6 Whistleblowers ineligible for an award.

(a) No award under § 165.7 shall be made:

(1) To any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of: the Commission; the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Board of Directors of the Federal Deposit Insurance Corporation; the Director of the Office of Thrift Supervision; the National Credit Union Administration Board; the Securities and Exchange Commission; the Department of Justice; a registered entity; a registered futures association; a self-regulatory organization; or a law enforcement organization;

(2) To any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under § 165.7;

(3) To any whistleblower who submits information to the Commission that is based on the facts underlying the covered judicial or administrative action submitted previously by another whistleblower;

(4) To any whistleblower who acquired the information the whistleblower gave the Commission from any of the individuals described in paragraphs (a)(1), (2), (3) or (6) of this section;

(5) To any whistleblower who, in the whistleblower's submission, the whistleblower's other dealings with the Commission, or the whistleblower's dealings with another authority in connection with a related action, knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or uses any false writing or document, knowing that it contains any false, fictitious, or fraudulent statement or entry, or omitted any material fact, where, in the absence of such fact, other statements or representations made by the whistleblower would be misleading;

(6) To any whistleblower who acquired the original information reported to the Commission as a result of the whistleblower's role as a member, officer or employee of either a foreign regulatory authority or law enforcement organization;

(7) To any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of a foreign regulatory authority or law enforcement organization; or

(8) To any whistleblower who acquired the original information the whistleblower gave the Commission from any other person with the intent to evade any provision of these rules.

(b) Notwithstanding a whistleblower's ineligibility for an award for any reason set forth in paragraph (a) of this section, the whistleblower will remain eligible for the anti-retaliation protections set forth in Section 23(h)(1) of the Commodity Exchange Act.

§ 165.7 Procedures for award applications and Commission award determinations.

(a) Whenever a Commission judicial or administrative action results in monetary sanctions totaling more than $1,000,000 (*i.e.,* a covered judicial or administrative action) the Commission will publish on the Commission's Web site a ''Notice of Covered Action.'' Such Notice of Covered Action will be published subsequent to the entry of a final judgment or order that alone, or collectively with other judgments or orders previously entered in the Commission covered administrative or judicial action, exceeds $1,000,000 in

monetary sanctions. The Commission will not contact whistleblower claimants directly as to Notices of Covered Actions; prospective claimants should monitor the Commission Web site for such Notices. A whistleblower claimant will have 90 days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred.

(b) To file a claim for a whistleblower award, the whistleblower must file Form WB–APP, *Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act.* The whistleblower must sign this form as the claimant and submit it to the Commission by mail or fax to Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Fax (202) 418–5975. The Form WB–APP, including any attachments, must be received by the Commission within 90 calendar days of the date of the Notice of Covered Action or 90 calendar days following the date of a final judgment in a related action in order to be considered for an award.

(c) If the whistleblower provided the whistleblower's original information to the Commission anonymously pursuant to §§ 165.3 and 165.4 and:

(1) The whistleblower is making the whistleblower's claim for a whistleblower award on a disclosed basis, the whistleblower must disclose the whistleblower's identity on the Form WB–APP. The whistleblower's identity must be verified in a form and manner that is acceptable to the Commission prior to the payment of any award; or

(2) The whistleblower is making the whistleblower's claim for a whistleblower award on an anonymous basis, the whistleblower must be represented by counsel. The whistleblower must provide the whistleblower's counsel with a completed Form WB–APP that is signed by the whistleblower by no later than the date upon which the whistleblower's counsel submits to the Commission a copy of the Form WB–APP that does not disclose the whistleblower's identity and is signed solely by the whistleblower's counsel. In addition, the whistleblower's counsel must retain the signed original of the whistleblower's Form WB–APP in counsel's records. Upon request of the Commission staff, whistleblower's counsel must produce to the Commission the whistleblower's signed original WB–APP and the whistleblower's identity must be verified in a form and manner that is acceptable to the Commission prior to the payment of any award.

(d) Once the time for filing any appeals of the Commission's judicial or administrative action and all related actions has expired, or, where an appeal has been filed, after all appeals in the judicial, administrative and related actions have concluded, the Commission will evaluate all timely whistleblower award claims submitted on Form WB–APP in accordance with the criteria set forth in this Part 165. In connection with this process, the Commission may require that the whistleblower provide additional information relating to the whistleblower's eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 165.5(b). Following that evaluation, the Commission will send the whistleblower a Final Order setting forth whether the claim is allowed or denied and, if allowed, setting forth the award percentage amount.

(e) The Commission's Office of the Secretariat will provide the whistleblower with the Final Order of the Commission.

§ 165.8 Amount of award.

If all of the conditions are met for a whistleblower award in connection with a covered judicial or administrative action or a related action, the Commission will then decide the amount of the award pursuant to the procedure set forth in § 165.7.

(a) Whistleblower awards shall be in an aggregate amount equal to—

(1) Not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the covered judicial or administrative action or related actions; and

(2) Not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the covered judicial or administrative action or related actions.

(b) If the Commission makes awards to more than one whistleblower in connection with the same action or related action, the Commission will determine an individual percentage award for each whistleblower, but in no event will the total amount awarded to all whistleblowers as a group be less than 10 percent or greater than 30 percent of the amount the Commission or the other authorities collect.

§ 165.9 Criteria for determining amount of award.

The determination of the amount of an award shall be in the discretion of the Commission. The Commission may exercise this discretion directly or through delegated authority pursuant to § 165.15.

(a) In determining the amount of an award, the Commission shall take into consideration—

(1) The significance of the information provided by the whistleblower to the success of the covered judicial or administrative action or related action;

(2) The degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action or related action;

(3) The programmatic interest of the Commission in deterring violations of the Commodity Exchange Act by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws;

(4) Whether the award otherwise enhances the Commission's ability to enforce the Commodity Exchange Act, protect customers, and encourage the submission of high quality information from whistleblowers; and

(5) Potential adverse incentives from oversize awards.

(b) *Factors that may increase the amount of a whistleblower's award.* In determining whether to increase the amount of an award, the Commission will consider the following factors, which are not listed in order of importance.

(1) *Significance of the information provided by the whistleblower.* The Commission will assess the significance of the information provided by a whistleblower to the success of the Commission action or related action. In considering this factor, the Commission may take into account, among other things:

(i) The nature of the information provided by the whistleblower and how it related to the successful enforcement action, including whether the reliability and completeness of the information provided to the Commission by the whistleblower resulted in the conservation of Commission resources; and

(ii) The degree to which the information provided by the whistleblower supported one or more successful claims brought in the Commission action or related action.

(2) *Assistance provided by the whistleblower.* The Commission will assess the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the Commission action or related action. In considering this factor, the Commission may take into account, among other things:

(i) Whether the whistleblower provided ongoing, extensive, and timely

cooperation and assistance by, for example, helping to explain complex transactions, interpreting key evidence, or identifying new and productive lines of inquiry;

(ii) The timeliness of the whistleblower's initial report to the Commission or to an internal compliance or reporting system of business organizations committing, or impacted by, the violations of the Commodity Exchange Act, where appropriate;

(iii) The resources conserved as a result of the whistleblower's assistance;

(iv) Whether the whistleblower appropriately encouraged or authorized others to assist the staff of the Commission who might otherwise not have participated in the investigation or related action;

(v) The efforts undertaken by the whistleblower to remediate the harm caused by the violations of the Commodity Exchange Act, including assisting the authorities in the recovery of the fruits and instrumentalities of the violations; and

(vi) Any unique hardships experienced by the whistleblower as a result of his or her reporting and assisting in the enforcement action.

(3) *Law enforcement interest.* The Commission will assess its programmatic interest in deterring violations of the Commodity Exchange Act by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws. In considering this factor, the Commission may take into account, among other things:

(i) The degree to which an award enhances the Commission's ability to enforce the commodity laws;

(ii) The degree to which an award encourages the submission of high quality information from whistleblowers by appropriately rewarding whistleblower submissions of significant information and assistance, even in cases where the monetary sanctions available for collection are limited or potential monetary sanctions were reduced or eliminated by the Commission because an entity self-reported a commodities violation following the whistleblower's related internal disclosure, report, or submission;

(iii) Whether the subject matter of the action is a Commission priority, whether the reported misconduct involves regulated entities or fiduciaries, whether the whistleblower exposed an industry-wide practice, the type and severity of the commodity violations, the age and duration of misconduct, the number of violations, and the isolated, repetitive, or ongoing nature of the violations;

(iv) The dangers to market participants or others presented by the underlying violations involved in the enforcement action, including the amount of harm or potential harm caused by the underlying violations, the type of harm resulting from or threatened by the underlying violations, and the number of individuals or entities harmed; and

(v) The degree, reliability and effectiveness of the whistleblower's assistance, including the consideration of the whistleblower's complete, timely truthful assistance to the Commission and criminal authorities.

(4) *Participation in internal compliance systems.* The Commission will assess whether, and the extent to which, the whistleblower and any legal representative of the whistleblower participated in internal compliance systems. In considering this factor, the Commission may take into account, among other things:

(i) Whether, and the extent to which, a whistleblower reported the possible Commodity Exchange Act violations through internal whistleblower, legal or compliance procedures before, or at the same time as, reporting them to the Commission; and

(ii) Whether, and the extent to which, a whistleblower assisted any internal investigation or inquiry concerning the reported Commodity Exchange Act violations.

(c) *Factors that may decrease the amount of a whistleblower's award.* In determining whether to decrease the amount of an award, the Commission will consider the following factors, which are not listed in order of importance.

(1) *Culpability.* The Commission will assess the culpability or involvement of the whistleblower in matters associated with the Commission's action or related actions. In considering this factor, the Commission may take into account, among other things:

(i) The whistleblower's role in the Commodity Exchange Act violations;

(ii) The whistleblower's education, training, experience, and position of responsibility at the time the violations occurred;

(iii) Whether the whistleblower acted with scienter, both generally and in relation to others who participated in the violations;

(iv) Whether the whistleblower financially benefitted from the violations;

(v) Whether the whistleblower is a recidivist;

(vi) The egregiousness of any wrongdoing committed by the whistleblower; and

(vii) Whether the whistleblower knowingly interfered with the Commission's investigation of the violations or related enforcement actions.

(2) *Unreasonable reporting delay.* The Commission will assess whether the whistleblower unreasonably delayed reporting the Commodity Exchange Act violations. In considering this factor, the Commission may take into account, among other things:

(i) Whether the whistleblower was aware of the relevant facts but failed to take reasonable steps to report or prevent the violations from occurring or continuing;

(ii) Whether the whistleblower was aware of the relevant facts but only reported them after learning about a related inquiry, investigation, or enforcement action; and

(iii) Whether there was a legitimate reason for the whistleblower to delay reporting the violations.

(3) *Interference with internal compliance and reporting systems.* The Commission will assess, in cases where the whistleblower interacted with his or her entity's internal compliance or reporting system, whether the whistleblower undermined the integrity of such system. In considering this factor, the Commission will take into account whether there is evidence provided to the Commission that the whistleblower knowingly:

(i) Interfered with an entity's established legal, compliance, or audit procedures to prevent or delay detection of the reported Commodity Exchange Act violation;

(ii) Made any material false, fictitious, or fraudulent statements or representations that hindered an entity's efforts to detect, investigate, or remediate the reported Commodity Exchange Act violations; or

(iii) Provided any false writing or document knowing the writing or document contained any false, fictitious or fraudulent statements or entries that hindered an entity's efforts to detect, investigate, or remediate the reported Commodity Exchange Act violations.

(d) The Commission shall not take into consideration the balance of the Fund in determining the amount of an award.

§ 165.10 Contents of record for award determinations.

(a) The following items constitute the record upon which the award determination under § 165.7 shall be made:

(1) The whistleblower's Form TCR, ''Tip, Complaint or Referral,'' including related attachments, and other documentation provided by the whistleblower to the Commission;

(2) The whistleblower's Form WB–APP, ''Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act,'' and related attachments;

(3) The complaint, notice of hearing, answers and any amendments thereto;

(4) The final judgment, consent order, or administrative speaking order;

(5) The transcript of the related administrative hearing or civil injunctive proceeding, including any exhibits entered at the hearing or proceeding;

(6) Any other documents that appear on the docket of the proceeding; and

(7) Sworn declarations (including attachments) from the Commission's Division of Enforcement staff regarding any matters relevant to the award determination.

(b) The record upon which the award determinations under § 165.7 shall be made shall not include any Commission pre-decisional, attorney-client privilege, attorney work product privilege, or internal deliberative process materials related to the Commission or its staff's determination: To file or settle the related covered judicial or administrative action; and/or whether, to whom and in what amount to make a whistleblower award. Further, the record upon which the award determination under § 165.7 shall be made shall not include any other entity's pre-decisional, attorney-client privilege, attorney work product privilege, or internal deliberative process materials related to its or its staff's determination to file or settle a related action.

§ 165.11 Awards based upon related actions.

Provided that a whistleblower or whistleblowers comply with the requirements in §§ 165.3, 165.5 and 165.7, and pursuant to § 165.8, the Commission or its delegate may grant an award based on the amount of monetary sanctions collected in a ''related action'' or ''related actions'' rather than on the amount collected in a covered judicial or administrative action, where:

(a) A ''related action'' is a judicial or administrative action that is brought by:

(1) The Department of Justice;

(2) An appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

(3) A registered entity, registered futures association, or self-regulatory organization;

(4) A State criminal or appropriate civil agency, acting within the scope of its jurisdiction; or

(5) A foreign futures authority; and

(b) The ''related action'' is based on the same original information that the whistleblower voluntarily submitted to the Commission and led to a successful resolution of the Commission judicial or administrative action.

§ 165.12 Payment of awards from the Fund, financing of customer education initiatives, and deposits and credits to the Fund.

(a) The Commission shall pay awards to whistleblowers from the Fund.

(b) The Commission shall deposit into or credit to the Fund:

(1) Any monetary sanctions collected by the Commission in any covered judicial or administrative action that is not otherwise distributed, or ordered to be distributed, to victims of a violation of the Commodity Exchange Act underlying such action, unless the balance of the Fund at the time the monetary sanctions are collected exceeds $100,000,000. In the event the Fund's value exceeds $100,000,000, any monetary sanctions collected by the Commission in a covered judicial or administrative action that is not otherwise distributed, or ordered to be distributed, to victims of violations of the Commodity Exchange Act or the rules and regulations thereunder underlying such action, shall be deposited into the general fund of the U.S. Treasury.

(2) In the event that the amounts deposited into or credited to the Fund under paragraph (b)(1) of this section are not sufficient to satisfy an award made pursuant to § 165.7, then, pursuant to Section 23(g)(3)(B) of the Commodity Exchange Act;

(i) An amount equal to the unsatisfied portion of the award;

(ii) Shall be deposited into or credited to the Fund;

(iii) From any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the Commodity Exchange Act, regardless of whether it qualifies as a ''covered judicial or administrative action''; *provided,* however, that such judicial or administrative action is based on information provided by a whistleblower.

(c) *Office of Consumer Outreach.* The Commission shall undertake and maintain customer education initiatives through its Office of Consumer Outreach. The initiatives shall be designed to help customers protect themselves against fraud or other violations of the Commodity Exchange Act, or the rules or regulations thereunder. The Commission shall fund the initiatives and may utilize funds deposited into the Fund during any fiscal year in which the beginning (October 1) balance of the Fund is greater than $10,000,000. The Commission shall budget, on an annual basis, the amount used to finance customer education initiatives, taking into consideration the balance of the Fund.

§ 165.13 Appeals.

(a) Any Final Order of the Commission relating to a whistleblower award determination, including whether, to whom, or in what amount to make whistleblower awards, may be appealed to the appropriate court of appeals of the United States not more than 30 days after the Final Order of the Commission is issued.

(b) The record on appeal shall consist of:

(1) The Contents of Record for Award Determinations, as set forth in § 165.9; and

(2) The Final Order of the Commission, as set forth in § 165.7.

§ 165.14 Procedures applicable to the payment of awards.

(a) A recipient of a whistleblower award is entitled to payment on the award only to the extent that the monetary sanction upon which the award is based is collected in the Commission judicial or administrative action or in a related action.

(b) Payment of a whistleblower award for a monetary sanction collected in a Commission action or related action shall be made within a reasonable time following the later of:

(1) The date on which the monetary sanction is collected; or

(2) The completion of the appeals process for all whistleblower award claims arising from:

(i) The Notice of Covered Action, in the case of any payment of an award for a monetary sanction collected in a covered judicial or administrative action; or

(ii) The related action, in the case of any payment of an award for a monetary sanction collected in a related action.

(c) If there are insufficient amounts available in the Fund to pay the entire amount of an award payment within a reasonable period of time from the time for payment specified by paragraph (b) of this section, then subject to the following terms, the balance of the payment shall be paid when amounts become available in the Fund, as follows:

(1) Where multiple whistleblowers are owed payments from the Fund based on awards that do not arise from the same Notice of Covered Action (or related action), priority in making these payments will be determined based upon the date that the Final Order of the Commission is made. If two or more of these Final Orders of the Commission are entered on the same date, then those whistleblowers owed payments will be paid on a pro rata basis until sufficient amounts become available in the Fund to pay their entire payments.

(2) Where multiple whistleblowers are owed payments from the Fund based on awards that arise from the same Notice of Covered Action (or related action), they will share the same payment priority and will be paid on a pro rata basis until sufficient amounts become available in the Fund to pay their entire payments.

§ 165.15 Delegations of authority.

(a) *Delegation of authority to the Executive Director.* The Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director or to any Commission employee under the Executive Director's supervision as he or she may designate, the authority to take the following actions to carry out this Part 165 and the requirements of Section 23(h) of Commodity Exchange Act.

(1) *Delegated authority under § 165.12(a), (b).* The Executive Director's delegated authority to deposit into or credit collected monetary sanctions to the Fund and the payment of awards therefrom shall be with the concurrence of the General Counsel and the Director of the Division of Enforcement or of their respective designees.

(2) *Delegated authority to select a Whistleblower Award Determination Panel that shall be composed of three of the Commission's Offices or Divisions.* The Whistleblower Award Determination Panel shall include neither the Division of Enforcement nor the Office of General Counsel.

(b) *Delegation of Authority to Whistleblower Award Determination Panel.* The Commission hereby delegates, until such time as the Commission orders otherwise, to the Whistleblower Award Determination Panel the authority to make whistleblower award determinations under this Part 165, including the determinations as whether, to whom, or in what amount to make awards. Award determinations in matters involving monetary sanctions in either the Commission's action or a related action that total more than $15,000,000 (*i.e.,* matters with a maximum potential whistleblower award greater than $5,000,000) must be determined by the heads of the Offices or Divisions comprising the Whistleblower Award Determination Panel. In all other matters, award determinations may be determined by the employee designees of the heads of the Offices or Divisions comprising the Whistleblower Award Determination Panel.

(c) *Delegation of Authority to the Whistleblower Office.* With the exception of § 165.12, the Commission hereby delegates, until such time as the Commission orders otherwise, to the head of the Whistleblower Office the authority to take any action under this Part 165 that is not otherwise delegated to either the Executive Director or the Whistleblower Award Determination Panel under this section, including the authority to administer the Commission's whistleblower program and liaise with whistleblowers.

§ 165.16 No immunity.

The Commodity Whistleblower Incentives and Protections provisions set forth in Section 23(h) of Commodity Exchange Act and this Part 165 do not provide individuals who provide information to the Commission with immunity from prosecution. The fact that an individual may become a whistleblower and assist in Commission investigations and enforcement actions does not preclude the Commission from bringing an action against the whistleblower based upon the whistleblower's own conduct in connection with violations of the Commodity Exchange Act and the Commission's regulations. If such an action is determined to be appropriate, however, the Commission's Division of Enforcement will take the whistleblower's cooperation into consideration in accordance with its sanction recommendations to the Commission.

§ 165.17 Awards to whistleblowers who engage in culpable conduct.

In determining whether the required $1,000,000 threshold has been satisfied for purposes of making any award, the Commission will not take into account any monetary sanctions that the whistleblower is ordered to pay, or that is ordered against any entity whose liability is based primarily on conduct that the whistleblower principally directed, planned, or initiated. Similarly, if the Commission determines that a whistleblower is eligible for an award, any amounts that the whistleblower or such an entity pay in sanctions as a result of the action or related actions will not be included within the calculation of the amounts collected for purposes of making payments pursuant to § 165.14.

§ 165.18 Staff communications with whistleblowers from represented entities.

If the whistleblower is a whistleblower who is a director, officer, member, agent, or employee of an entity that has counsel, and the whistleblower has initiated communication with the Commission relating to a potential violation of the Commodity Exchange Act, the Commission's staff is authorized to communicate directly with the whistleblower regarding the subject of the whistleblower's communication without seeking the consent of the entity's counsel.

§ 165.19 Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes.

The rights and remedies provided for in this Part 165 of the Commission's regulations may not be waived by any agreement, policy, form, or condition of employment, including by a predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if the agreement requires arbitration of a dispute arising under this Part.

Appendix A to Part 165—Guidance With Respect to the Protection of Whistleblowers Against Retaliation

Section 23(h)(1) of Commodity Exchange Act prohibits employers from engaging in retaliation against whistleblowers. This provision provides whistleblowers with certain protections against retaliation, including: A federal cause of action against the employer, which must be filed in the appropriate district court of the United States within two (2) years of the employer's retaliatory act; and potential relief for prevailing whistleblowers, including reinstatement, back pay, and compensation for other expenses, including reasonable attorney's fees.

(a) *In General.* No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

(1) In providing information to the Commission in accordance with this part 165; or

(2) In assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

(b) *Enforcement*—(1) *Cause of Action.*—An individual who alleges discharge or other discrimination in violation of section 23(h)(1)(A) of the Commodity Exchange Act may bring an action under section 23(h)(1)(B) of the Commodity Exchange Act in the appropriate district court of the United States

for the relief provided in section 23(h)(1)(C) of the Commodity Exchange Act, unless the individual who is alleging discharge or other discrimination in violation of section 23(h)(1)(A) of the Commodity Exchange Act is an employee of the Federal Government, in which case the individual shall only bring an action under section 1221 of title 5, United States Code.

(2) *Subpoenas.*—A subpoena requiring the attendance of a witness at a trial or hearing conducted under section 23(h)(1)(A) of the Commodity Exchange Act may be served at any place in the United States.

(3) *Statute of Limitations.*—An action under section 23(h)(1)(B) of the Commodity Exchange Act may not be brought more than 2 years after the date on which the violation reported in Section 23(h)(1)(A) of the Commodity Exchange Act is committed.

(c) *Relief.*—Relief for an individual prevailing in an action brought under section 23(h)(1)(B) of the Commodity Exchange Act shall include—

(1) Reinstatement with the same seniority status that the individual would have had, but for the discrimination;

(2) The amount of back pay otherwise owed to the individual, with interest; and

(3) Compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

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UNITED STATES
COMMODITY FUTURES TRADING COMMISSION
Washington, DC 20581

FORM TCR
TIP, COMPLAINT OR REFERRAL

A. INFORMATION ABOUT YOU			
COMPLAINANT 1:			
2. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
3. Telephone	Alt. Phone	E-mail Address	Preferred Method of Communication
4. Occupation			
COMPLAINANT 2: 1. Last Name		First	M.I.
2. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
3. Telephone	Alt. Phone	E-mail Address	Preferred Method of Communication
4. Occupation			
B. ATTORNEY'S INFORMATION (If Applicable – See Instructions)			
1. Attorney's Name			

2. Firm Name			
3. Street Address			
City	State/ Province	ZIP/ Postal Code	Country
4. Telephone	Fax	E-mail Address	

C. TELL US ABOUT THE INDIVIDUAL AND/OR ENTITY THE WHISTLEBLOWER HAS A COMPLAINT AGAINST

INDIVIDUAL/ENTITY 1: 1. Type: ☐ Individual ☐ Entity	If An Individual, Specify Profession: If An Entity, Specify Type:		
2. Name			
3. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
4. Phone	E-mail Address	Internet Address	
INDIVIDUAL/ENTITY 2: 1. Type: ☐ Individual ☐ Entity	If an individual, specify profession: If an entity, specify type:		
2. Name			
3. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country

4. Phone	E-mail Address	Internet Address

D. TELL US ABOUT THE WHISTLEBLOWER'S COMPLAINT

1. Occurrence Date (mm/dd/yyyy): / /	2. Nature of Complaint:

3a. Has the complainant or counsel had any prior communication(s) with the CFTC concerning this matter?
YES ☐ NO ☐

3b. If the answer to 3a is "Yes," name of CFTC staff member with whom the complainant or counsel communicated.

4a. Have you or your counsel provided the information to any other agency or organization, or has any other agency or organization requested the information or related information from you?
YES ☐
NO ☐

4b. If the answer to 4a is "Yes," please provide details. Use additional sheets, if necessary.

4c. Name and contact information for point of contact at other agency or organization, if known.

5a. Does this complaint relate to an entity of which the complainant is or was an officer, director, counsel, employee, consultant or contractor? YES ☐
NO ☐

5b. If the answer to question 5a is "yes," has the complainant reported this violation to his or her supervisor, compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations? YES ☐ NO ☐

5c. If the answer to question 5b is "yes," please provide details. Use additional sheets, if necessary.

5d. Date on which the complainant took the action(s) described in question 5b (mm/dd/yyyy): / /
6a. Have you taken any other action regarding your complaint? YES ☐ NO ☐
6b. If the answer to question 6a is "yes," please provide details. Use additional sheets, if necessary.
7a. Type of financial product or investment, if relevant.
7b. Name of financial product or investment, if relevant.
8. State in detail all facts pertinent to the alleged violation. Explain why the complainant believes the facts described constitute a violation of the Commodity Exchange Act (CEA). Use additional sheets, if necessary.
9. Describe all supporting materials in the complainant's possession and the availability and location of any additional supporting materials not in complainant's possession. Use additional sheets, if necessary.

10. Describe how and from whom the complainant obtained the information that supports this claim. If any information was obtained from an attorney or in a communication where an attorney was present, identify such information with as much particularity as possible. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Use additional sheets, if necessary.

11. Identify with particularity any documents or other information in the whistleblower's submission that the whistleblower believes could reasonably be expected to reveal the whistleblower's identity and explain the basis for the whistleblower's belief that the whistleblower's identity would be revealed if the documents or information were disclosed to a third party.

12. Provide any additional information the whistleblower thinks may be relevant.

E. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Are you, or was the whistleblower at the time the whistleblower acquired the original information the whistleblower is submitting to the Commission a member, officer or employee of the Department of Justice, the Commodity Futures Trading Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, a registered entity, a registered futures association, a self-regulatory organization, or any law enforcement organization?

YES ☐

NO ☐

2. Is the whistleblower providing this information pursuant to a cooperation agreement with the Commodity Futures Trading Commission or another agency or organization?
YES ☐ NO ☐

3. Is the whistleblower providing this information before the whistleblower (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of the whistleblower's submission (i) from the Commodity Futures Trading Commission, (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization, or (iii) in connection with an investigation by the Congress, or any other federal or state authority?
YES ☐ NO ☐

4. Is the whistleblower currently a subject or target of a criminal investigation, or have the whistleblower been convicted of a criminal violation, in connection with the information the whistleblower is submitting to the Commodity Futures Trading Commission?
YES ☐
NO ☐

5. Did the whistleblower acquire the information being provided to us from any person described in questions E1 through E5?
YES ☐ NO ☐

6. Are you, or was the whistleblower at the time the whistleblower acquired the original information the whistleblower is submitting to the Commission a member, officer, or employee of a foreign regulatory authority or law enforcement organization.
YES ☐ NO ☐

7. Use this space to provide additional details relating to the whistleblower's responses to questions 1 through 5. Use additional sheets, if necessary.

F. WHISTLEBLOWER'S DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the Commodity Futures Trading Commission, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.

Print Name

Signature | Date

G. COUNSEL CERTIFICATION

I certify that I have reviewed this form for completeness and accuracy and that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I further certify that I have verified the identity of the whistleblower on whose behalf this form is being submitted by viewing the whistleblower's valid, unexpired government issued identification (*e.g.*, driver's license, passport) and will retain an original, signed copy of this form, with Section F signed by the whistleblower, in my records. I further certify that I have obtained the whistleblower's non-waiveable consent to provide the Commodity Futures Trading Commission with his or her original signed Form TCR upon request in the event that the Commodity Futures Trading Commission requests it due to concerns that the whistleblower may have knowingly and willfully made false, fictitious, or fraudulent statements or representations, or used any false writing or document knowing that the writing or document contains any false fictitious or fraudulent statement or entry; and that I consent to be legally obligated to do so within 7 calendar days of receiving such a request from the Commodity Futures Trading Commission.
Signature | Date

BILLLING CODE–C

Privacy Act Statement

This notice is given under the Privacy Act of 1974. The Privacy Act requires that the Commodity Futures Trading Commission (CFTC or Commission) inform individuals of the following when asking for information. This form may be used by anyone wishing to provide the CFTC with information concerning a violation of the Commodity Exchange Act or the Commission's regulations. If the whistleblower is submitting this information for the Commission's whistleblower award program pursuant to Section 23 of the Commodity Exchange Act, the information provided will enable the Commission to determine the whistleblower's eligibility for payment of an award. This information may be disclosed to Federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing laws, rules, or regulations implicated by the information consistent with the confidentiality requirements set forth therein, including pursuant to Section 23 of the Commodity Exchange Act and Part 165 of the Commission's regulations thereunder. Furnishing the information is voluntary, but a decision not to do so may result in the whistleblower not being eligible for award consideration.

Questions concerning this form may be directed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Submission Procedures

- After completing this Form TCR, please send it electronically, by mail, e-mail or delivery to the Commission: electronically via the Commission's Web site; by mail or delivery to the Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581; by e-mail to XXXXX.gov; or by facsimile to (202) XXX–XXXX.
- The whistleblower has the right to submit information anonymously.
- If the whistleblower is submitting information for the Commission's whistleblower award program, the whistleblower must submit the whistleblower's information using this Form TCR.

Instructions for Completing Form TCR

Section A: Information About You

Questions 1–4: Please provide the following information about yourself:

- Last name, first name, and middle initial;
- Complete address, including city, state and zip code;
- Telephone number and, if available, an alternate number where the whistleblower can be reached;
- The whistleblower's e-mail address (to facilitate communications, we strongly encourage the whistleblower to provide the whistleblower's email address);
- The whistleblower's preferred method of communication; and
- The whistleblower's occupation.

Section B: Information about the Whistleblower's Attorney. Complete this Section Only if the Whistleblower is Represented by an Attorney in this Matter

Questions 1–4: Provide the following information about the attorney representing the whistleblower in this matter:

- Attorney's name;
- Firm name;
- Complete address, including city, state and zip code;
- Telephone number and fax number; and
- E-mail address.

Section C: Tell Us About the Individual and/or Entity The Whistleblower Has a Complaint Against

If the whistleblower's complaint relates to more than two individuals and/or entities, the whistleblower may use additional sheets, if necessary.

Question 1: Choose one of the following that best describes the individual's profession or entity's type to which the whistleblower's complaint relates:

- *For Individuals:* Accountant, analyst, associated person, attorney, auditor, broker, commodity trading advisor, commodity pool operator, compliance officer, employee, executing broker, executive officer or director, financial planner, floor broker, floor trader, trader, unknown, or other (specify).
- *For Entities:* Bank, commodity trading advisor, commodity pool operator, commodity pool, futures commission merchant, hedge fund, introducing broker, major swap participant, retail foreign exchange dealer, swap dealer, unknown, or other (specify).

Questions 2–4: For each individual and/or entity, provide the following information, if known:

- Full name;
- Complete address, including city, state and zip code;
- Telephone number;
- E-mail address; and
- Internet address, if applicable.

Section D: Tell Us About the Whistleblower's Complaint

Question 1: State the date (mm/dd/yyyy) that the alleged conduct began.

Question 2: Choose the option that the whistleblower believes best describes the nature of the whistleblower's complaint. If the whistleblower is alleging more than one violation, please list all that the whistleblower believes may apply. Use additional sheets, if necessary.

- Theft/misappropriation;
- Misrepresentation/omission (*i.e.,* false/misleading marketing/sales literature; inaccurate, misleading or non-disclosure by commodity pool operator, commodity trading advisor, futures commission merchant, introducing broker, retail foreign exchange

dealer, major swap participant, swap dealer, or their associated person(s); false/material misstatements in any report or statement);

- Ponzi/pyramid scheme;
- Off-exchange foreign currency, commodity, or precious metal fraud;
- Registration violations (including unregistered commodity pool operator; commodity trading advisor; futures commission merchant; introducing broker; retail foreign exchange dealer; swap dealer; or their associated person(s));
- Trading (after hours trading; algorithmic trading; disruptive trading; front running; insider trading; manipulation/attempted manipulation of commodity prices; market timing; inaccurate quotes/pricing information; program trading; trading suspensions; volatility);
- Fees/mark-ups/commissions (excessive, unnecessary or unearned administrative, commission or sales fees; failure to disclose fees; insufficient notice of change in fees; excessive or otherwise improper spreads or fills);
- Sales and advisory practices (background information on past violations/integrity; breach of fiduciary duty/responsibility; churning/excessive trading; cold calling; conflict of interest; abuse of authority in discretionary trading; failure to respond to client, customer or participant; guarantee against loss; promise to profit; high pressure sales techniques; instructions by client, customer or participant not followed; investment objectives not followed; solicitation methods (e.g., cold calling, seminars);
- Customer accounts (unauthorized trading); identity theft affecting account; inaccurate valuation of Net Asset Value; or
- Other (analyst complaints; market maker activities; employer/employee disputes; specify other).

Question 3a: State whether the whistleblower or the whistleblower's counsel has had any prior communications with the CFTC concerning this matter.

Question 3b: If the answer to question 3a is yes, provide the name of the CFTC staff member with whom the whistleblower or the whistleblower's counsel communicated.

Question 4a: Indicate whether the whistleblower or the whistleblower's counsel has provided the information the whistleblower is providing to the CFTC to any other agency or organization.

Question 4b: If the answer to question 4a is yes, provide details.

Question 4c: Provide the name and contact information of the point of contact at the other agency or organization, if known.

Question 5a: Indicate whether the whistleblower's complaint relates to an entity of which the whistleblower is, or was in the past, an officer, director, counsel, employee, consultant, or contractor.

Question 5b: If the answer to question 5a is yes, state whether the whistleblower has reported this violation to the whistleblower's supervisor, compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations.

Question 5c: If the answer to question 5b is yes, provide details.

Question 5d: Provide the date on which the whistleblower took the actions described in questions 5a and 5b.

Question 6a: Indicate whether the whistleblower has taken any other action regarding the whistleblower's complaint, including whether the whistleblower complained to the Commission, another regulator, a law enforcement agency, or any other agency or organization; initiated legal action, mediation or arbitration, or initiated any other action.

Question 6b: If the whistleblower answered yes to question 6a, provide details, including the date on which the whistleblower took the action(s) described, the name of the person or entity to whom the whistleblower directed any report or complaint and contact information for the person or entity, if known, and the complete case name, case number, and forum of any legal action the whistleblower has taken. Use additional sheets, if necessary.

Question 7a: Choose from the following the option that the whistleblower believes best describes the type of financial product or investment at issue, if applicable:

- Commodity futures;
- Options on commodity futures;
- Commodity options;
- Foreign currency transactions;
- Swaps; or
- Other (specify).

Question 7b: Provide the name of the financial product or investment, if applicable.

Question 8: State in detail all the facts pertinent to the alleged violation. Explain why the whistleblower believes the facts described constitute a violation of the Commodity Exchange Act. Use additional sheets, if necessary.

Question 9: Describe all supporting materials in the whistleblower's possession, custody or control, and the availability and location of additional supporting materials not in the whistleblower's possession, custody or control. Use additional sheets, if necessary.

Question 10: Describe how the whistleblower obtained the information that supports the whistleblower's allegation. If any information was obtained from an attorney or in a communication where an attorney was present, identify such information with as much particularity as possible. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Use additional sheets, if necessary.

Question 11: The whistleblower may use this space to identify any documents or other information in the whistleblower's submission on this Form TCR that the whistleblower believes could reasonably be expected to reveal the whistleblower's identity. Explain the basis for the whistleblower's belief that the whistleblower's identity would be revealed if the documents or information were disclosed to a third party.

Question 12: Provide any additional information the whistleblower thinks may be relevant.

Section E: Eligibility Requirements

Question 1: State whether the whistleblower is currently, or was at the time the whistleblower acquired the original information that the whistleblower is submitting to the Commodity Futures Trading Commission, a member, officer or employee of the Department of Justice, the Commodity Futures Trading Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, a registered entity, a registered futures association, a self-regulatory organization, or any law enforcement organization.

Question 2: State whether the whistleblower is providing the information pursuant to a cooperation agreement with the Commodity Futures Trading Commission or with any other agency or organization.

Question 3: State whether the whistleblower is providing this information before the whistleblower (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of the whistleblower's submission: (i) From the CFTC; (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization; or (iii) in connection with an investigation by the Congress, or any other federal or state authority.

Question 4: State whether the whistleblower is currently a subject or target of a criminal investigation, or has the whistleblower been convicted of a criminal violation, in connection with the information the whistleblower is submitting to the Commodity Futures Trading Commission.

Question 5: State whether the whistleblower acquired the information the whistleblower is providing to the Securities and Exchange Commission from any individual described in Questions 1 through 5 of this Section.

Question 6: State whether the whistleblower is currently, or was at the time the whistleblower acquired the original information that the whistleblower is submitting to the Commodity Futures Trading Commission, a member, officer, or employee of a foreign regulatory authority or law enforcement organization.

Question 7: Use this space to provide additional details relating to the whistleblower's responses to questions 1 through 6. Use additional sheets, if necessary.

Section F: Whistleblower's Declaration

The whistleblower must sign this Declaration if the whistleblower is submitting this information pursuant to the Commodity Futures Trading Commission whistleblower program and wish to be considered for an award. If the whistleblower is submitting the whistleblower's information anonymously, the whistleblower must still sign this Declaration, and the whistleblower must provide the whistleblower's attorney with the original of this signed form.

If the whistleblower is not submitting the whistleblower's information pursuant to the

Commodity Futures Trading Commission whistleblower program, the whistleblower do not need to sign this Declaration.

Section G: Counsel Certification

If the whistleblower is submitting this information pursuant to the Commodity Futures Trading Commission whistleblower program and is doing so anonymously through an attorney, the whistleblower's attorney must sign the Counsel Certification section.

If the whistleblower is represented in this matter but the whistleblower is *not* submitting the whistleblower's information pursuant to the Commodity Futures Trading Commission whistleblower program, the whistleblower's attorney does not need to sign the Counsel Certification Section.

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UNITED STATES
COMMODITY FUTURES TRADING COMMISSION
Washington, DC 20581

FORM WB-APP

APPLICATION FOR AWARD FOR ORIGINAL INFORMATION SUBMITTED PURSUANT TO SECTION 23 OF THE COMMODITY EXCHANGE ACT

A. APPLICANT'S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)			
1. Last Name	First	M.I.	Social Security No.
2. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
3. Telephone	Alt. Phone	E-mail Address	

B. ATTORNEY'S INFORMATION (IF APPLICABLE – SEE INSTRUCTIONS)			
1. Attorney's Name			
2. Firm Name			
3. Street Address			
City	State/ Province	Zip/ Postal Code	Country
4. Telephone	Fax	E-mail Address	

C. TIP/COMPLAINT DETAILS	
1. Manner in which original information was submitted to CFTC CFTC website ☐ Mail ☐ Fax ☐ Other ☐	
2a. Tip, Complaint or Referral (TCR) Number	2b. Date TCR referred to in 2a submitted to CFTC ___/___/____
2c. Subject(s) of the Tip, Complaint or Referral:	

D. NOTICE OF COVERED ACTION	

1. Date of Notice of Covered Action to Which Claim Relates ___/___/____	2. Notice Number:
3a. Case Name	3b. Case Number

E. CLAIMS PERTAINING TO RELATED ACTIONS

1. Name of agency or organization to which the whistleblower provided the whistleblower's information.

2. Name and contact information for point of contact at agency or organization, if known.

3a. Date the whistleblower provided the whistleblower's information (mm/dd/yyyy) ___/___/____	3b. Date action filed by agency/organization (mm/dd/yyyy) ___/___/____
4a. Case Name	4b. Case Number

F. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Is the whistleblower currently, or was the whistleblower at the time the whistleblower acquired the original information the whistleblower submitted to the CFTC, a member, officer or employee of the Department of Justice, the Commodity Futures Trading Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, a registered entity, a registered futures association, a self-regulatory organization, any law enforcement organization, or a foreign regulatory authority or law enforcement organization?
YES ☐ NO ☐

2. Did the whistleblower provide the information identified in Section C above pursuant to a cooperation agreement with the CFTC or another agency or organization?
YES ☐ NO ☐

3. Did the whistleblower acquire the information the whistleblower provided to the CFTC from any person described in questions F1 through F2? YES ☐ NO ☐

4. If the whistleblower answered "yes" to any of questions 1 through 3 above, please provide details. Use additional sheets, if necessary.

5a. Did the whistleblower provide the information identified in Section C above before the whistleblower (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of the whistleblower's submission: (i) from the CFTC; (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization; or (iii) in connection with an investigation by the Congress, or any other federal or state authority?

YES ☐ NO ☐

5b. If the whistleblower answered "yes" to question 5a, please provide details. Use additional sheets, if necessary.
6a. Is the whistleblower currently a subject or target of a criminal investigation, or have the whistleblower been convicted of a criminal violation, in connection with the information identified in Section C above and upon which the whistleblower's application for an award is based? YES ☐ NO ☐
6b. If the whistleblower answered "Yes" to question 6a, please provide details. Use additional sheets, if necessary.

G. ENTITLEMENT TO AWARD

Explain the basis for the whistleblower's belief that the whistleblower is entitled to an award in connection with the whistleblower's submission of information to the CFTC, or to another agency in a related action. Provide any additional information the whistleblower thinks may be relevant in light of the criteria for determining the amount of an award set forth in Section 23 of the Commodities Exchange Act and Part 165 of the Commission's Regulations thereunder. Include any supporting documents in the whistleblower's possession or control, and use additional sheets, if necessary.

H. DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the CFTC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.	
Print Name	Print Name
Signature	Date

BILLING CODE–C

Privacy Act Statement

This notice is given under the Privacy Act of 1974. The Privacy Act requires that the Commodity Futures Trading Commission (CFTC or Commission) inform individuals of the following when asking for information. The information provided will enable the Commission to determine the whistleblower's eligibility for payment of an award pursuant to Section 23 of the Commodity Exchange Act. This information may be disclosed to Federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing laws, rules, or regulations implicated by the information consistent with the confidentiality requirements set forth in Section 23 of the Commodity Exchange Act and Part 165 of the Commission's Regulations thereunder. Furnishing the information is voluntary, but a decision not

to do so may result in the whistleblower not being eligible for award consideration.

Questions concerning this form may be directed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

General

- This form should be used by persons making a claim for a whistleblower award in connection with information provided to the CFTC or to another agency in a related action. In order to be deemed eligible for an award, the whistleblower must meet all the requirements set forth in Section 23 of the Commodities Exchange Act and the rules thereunder.
- The whistleblower must sign the Form WB–APP as the claimant. If the whistleblower provided the whistleblower's information to the CFTC anonymously, the whistleblower must now disclose the whistleblower's identity on this form and the whistleblower's identity must be verified in a form and manner that is acceptable to the CFTC prior to the payment of any award.
  - If the whistleblower is filing the whistleblower's claim in connection with information that the whistleblower provided to the CFTC, then the whistleblower's Form WB–APP, and any attachments thereto, must be received by the CFTC within ninety (90) days of the date of the Notice of Covered Action or the date of a final judgment in a related action to which the claim relates.
  - If the whistleblower is filing the whistleblower's claim in connection with information the whistleblower provided to another agency in a related action, then the whistleblower's Form WB–APP, and any attachments there to, must be received by the Commodity Futures Trading Commission as follows:
- If a final order imposing monetary sanctions has been entered in a related action at the time the whistleblower submits the whistleblower's claim for an award in connection with a Commission action, the whistleblower must submit the whistleblower's claim for an award in that related action on the same Form WB–APP that the whistleblower uses for the Commission action.
- If a final order imposing monetary sanctions in a related action has not been entered at the time the whistleblower submits the whistleblower's claim for an award in connection with a Commission action, the whistleblower must submit the whistleblower's claim on Form WB–APP within ninety (90) days of the issuance of a final order imposing sanctions in the related action.
- The whistleblower must submit the whistleblower's Form WB–APP to us in one of the following two ways:
  - By mailing or delivering the signed form to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; or
  - By faxing the signed form to (202) XXX–XXXX.

Instructions for Completing Form WB–APP

Section A: Applicant's Information

Questions 1–3: Provide the following information about yourself:

- First and last name, and middle initial, and social security number;
- Complete address, including city, state and zip code;
- Telephone number and, if available, an alternate number where the whistleblower can be reached; and
- E-mail address.

Section B: Attorney's Information

If the whistleblower is represented by an attorney in this matter, provide the information requested. If the whistleblower is not represented by an attorney in this matter, leave this Section blank.

Questions 1–4: Provide the following information about the attorney representing the whistleblower in this matter:

- Attorney's name;
- Firm name;
- Complete address, including city, state and zip code;
- Telephone number and fax number; and
- E-mail address.

Section C: Tip/Complaint Details

Question 1: Indicate the manner in which the whistleblower's original information was submitted to the CFTC.

Question 2a: Include the TCR (Tip, Complaint or Referral) number to which this claim relates.

Question 2b: Provide the date on which the whistleblower submitted the whistleblower's information to the CFTC.

Question 2c: Provide the name of the individual(s) or entity(s) to which the whistleblower's tip, complaint, or referral related.

Section D: Notice of Covered Action

The process for making a claim for a whistleblower award begins with the publication of a ''Notice of a Covered Action'' on the Commission's Web site. This Notice is published whenever a judicial or administrative action brought by the Commission results in the imposition of monetary sanctions exceeding $1,000,000. The Notice is published on the Commission's Web site subsequent to the entry of a final judgment or order in the action that by itself, or collectively with other judgments or orders previously entered in the action, exceeds the $1,000,000 threshold required for a whistleblower to be potentially eligible for an award. The Commission will not contact whistleblower claimants directly as to Notices of Covered Actions; prospective claimants should monitor the Commission Web site for such Notices.

Question 1: Provide the date of the Notice of Covered Action to which this claim relates.

Question 2: Provide the notice number of the Notice of Covered Action.

Question 3a: Provide the case name referenced in Notice of Covered Action.

Question 3b: Provide the case number referenced in Notice of Covered Action.

Section E: Claims Pertaining to Related Actions

Question 1: Provide the name of the agency or organization to which the whistleblower provided the whistleblower's information.

Question 2: Provide the name and contact information for the whistleblower's point of contact at the agency or organization, if known.

Question 3a: Provide the date on which that the whistleblower provided the whistleblower's information to the agency or organization referenced in question E1.

Question 3b: Provide the date on which the agency or organization referenced in question E1 filed the related action that was based upon the information the whistleblower provided.

Question 4a: Provide the case name of the related action.

Question 4b: Provide the case number of the related action.

Section F: Eligibility Requirements and Other Information

Question 1: State whether the whistleblower is currently, or was at the time the whistleblower acquired the original information that the whistleblower submitted to the CFTC, a member, officer or employee of the Department of Justice, the Commodity Futures Trading Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, a registered entity, a registered futures association, a self-regulatory organization, any law enforcement organization, or a foreign regulatory authority or law enforcement organization.

Question 2: State whether the whistleblower provided the information submitted to the CFTC pursuant to a cooperation agreement with the CFTC or with any other agency or organization.

Question 3: State whether the whistleblower acquired the information the whistleblower provided to the CFTC from any individual described in Question 1 through 2 of this Section.

Question 5: If the whistleblower answered ''yes'' to questions 1 though 3 of this Section, please provide details.

Question 5a: State whether the whistleblower provided the information submitted to the CFTC before the whistleblower (or anyone representing the whistleblower) received any request, inquiry or demand that relates to the subject matter of the whistleblower's submission: (i) From the CFTC; (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization; or (iii) in connection with an investigation by the Congress, or any other federal or state authority.

Question 5b: If the whistleblower answered ''yes'' to questions 5a, please provide details. Use additional sheets if necessary.

Question 6a: State whether the whistleblower is the subject or target of a criminal investigation, or has been convicted of a criminal violation, in connection with the information upon which the whistleblower's application for an award is based.

Question 6b: If the whistleblower answered ''yes'' to question 6a, please provide details,

including the name of the agency or organization that conducted the investigation or initiated the action against you, the name and telephone number of the whistleblower's point of contact at the agency or organization, if available, and the investigation/case name and number, if applicable. Use additional sheets, if necessary.

Section G: Entitlement to Award

This section is optional. Use this section to explain the basis for the whistleblower's belief that the whistleblower is entitled to an award in connection with the whistleblower's submission of information to the Commission or to another agency in connection with a related action. Specifically, address how the whistleblower believes the whistleblower voluntarily provided the Commission with original information that led to the successful enforcement of a judicial or administrative action filed by the Commission, or a related action. Refer to § 165.11 of Part 165 of the Commission's Regulations for further information concerning the relevant award criteria. The whistleblower may use additional sheets, if necessary.

Section 23(c)(1)(B) of the CEA requires the Commission to consider in determining the amount of an award the following factors: (a) The significance of the information provided by a whistleblower to the success of the Commission action or related action; (b) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the Commission action or related action; (c) the programmatic interest of the Commission in deterring violations of the Commodity Exchange Act (including Regulations under the Act) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and (d) whether the award otherwise enhances the Commission's ability to enforce the Commodity Exchange Act, protect customers, and encourage the submission of high quality information from whistleblowers. Address these factors in the whistleblower's response as well.

Section H: Declaration

This section must be signed by the claimant.

Issued in Washington, DC, on August 4, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Final Rules for Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act—Commission Voting Summary and Statements of Commissioners

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

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Chilton and O'Malia voted in the affirmative; Commissioner Sommers voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking to establish a program for whistleblowers as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Congress enacted these provisions to incentivize whistleblowers to come forward with new information about potential fraud, manipulation or other misconduct in the financial markets. The final rule authorizes the Commodity Futures Trading Commission (CFTC) to provide a monetary award to whistleblowers when their original information leads to a successful enforcement action that results in sanctions over $1 million. The rule encourages people to assist the CFTC in identifying, investigating and prosecuting potential violations of the Commodity Exchange Act.

[FR Doc. 2011–20423 Filed 8–24–11; 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; Designation of Critical Habitat for Astragalus lentiginosus var. coachellae; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0064; MO 92210–0–0009]

RIN 1018–AX40

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Astragalus lentiginosus var. coachellae

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise designated critical habitat for *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch) under the Endangered Species Act of 1973, as amended (Act). In total, we are proposing approximately 25,704 acres (10,402 hectares) as critical habitat for this taxon in Riverside County, California.

DATES: We will accept comments received or postmarked on or before October 24, 2011. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by October 11, 2011.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R8–ES–2011–0064, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0064; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Rd., Ste. 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5902. 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 particular habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the taxon (the term taxon, as used herein, refers to any taxonomic rank that is not a species (for example, a genus, a subspecies, or a variety); *Astragalus lentiginosus* var. *coachellae* is a variety) from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of *Astragalus lentiginosus* var. *coachellae* habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the taxon, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas, that were not occupied at the time of listing, are essential for the conservation of the taxon and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts associated with climate change on *Astragalus lentiginosus* var. *coachellae* and proposed critical habitat.

(5) What areas, extent, and quality of the unoccupied fluvial (water) sand transport systems in the Coachella Valley and surrounding hills and mountains are essential to the conservation of *Astragalus lentiginosus* var. *coachellae* and should be included in the designation and why.

(6) 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, families, or tribes, and the benefits of including or excluding areas that exhibit these impacts.

(7) Which specific areas within tribal lands proposed for critical habitat should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific tribal lands outweigh the benefits of including that area, in particular for tribal lands owned or managed by the Morongo Band of Mission Indians (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation) or the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation.

(8) Which specific lands covered by the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan (Coachella Valley MSHCP/NCCP) proposed as critical habitat should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area covered by the Coachella Valley MSHCP/NCCP outweigh the benefits of including that area. We are currently considering all lands covered by the Coachella Valley MSHCP/NCCP and proposed as critical habitat for exclusion under section 4(b)(2) of the Act (see the *Habitat Conservation Plan Lands—Exclusions under Section 4(b)(2) of the Act* section below).

(9) What specific actions the Coachella Valley Association of Governments (CVAG) has undertaken to meet the objectives and goals set out in the Coachella Valley MSHCP/NCCP specific to *Astragalus lentiginosus* var. *coachellae* since CVAG began implementing the MSHCP/NCCP.

(10) Whether there are any other lands covered by habitat conservation plans or other conservation actions that benefit *Astragalus lentiginosus* var. *coachellae* and should be considered for exclusion under section 4(b)(2) of the Act, where the benefits of potentially excluding any specific area outweigh the benefits of including that area.

(11) 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.

(12) The validity of our approach for determining the extent of the fluvial sand transport system, and differentiating between fluvial sand transport and fluvial sand source areas. We identified fluvial sand source areas (areas where sediment is eroded from

parent rock by moving water) as portions of drainages where slope is 10 percent or greater and fluvial sand transport areas (corridors along which water transports sediment, but little erosion of parent rock takes place) as portions of drainages where slope is less than 10 percent. This approach was informed by Griffiths *et al.* (2002, p. 21), who found that sediment production in the drainage areas supplying sand to *Astragalus lentiginosus* var. *coachellae* habitat is much lower in areas where the ground slope is less than 10 percent.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section. 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 Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the revised designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* in this proposed rule. A summary of topics relevant to this proposed rule is provided below. For more information on *A. l.* var. *coachellae,* refer to the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596), and the designation of critical habitat for *A. l.* var. *coachellae* published in the **Federal Register** on December 14, 2005 (70 FR 74112). Additionally, information on this taxon may be found in the 5-year review for *A. l.* var. *coachellae* signed on September 1, 2009, which is available on our Web site at: *http://www.fws.gov/carlsbad/.*

Description of the Taxon

Astragalus lentiginosus var. *coachellae* is a member of the Fabaceae (pea family). It is one of the 36 varieties of *Astragalus lentiginosus* that collectively range from desert to timberline in North America (Barneby 1964, pp. 911–958). Coachella Valley milk-vetch was originally described by Rupert C. Barneby as *A. l.* var. *coulteri* based on a specimen collected in 1913 by Alice Eastwood in Palm Springs, California (Barneby 1945, p. 129). However, the name had previously been published for another milk-vetch, and consequently Barneby published a new, and currently accepted, name of *A. l.* var. *coachellae* (Barneby 1964, p. 695). It is an erect winter annual or short-lived perennial, 4 to 12 inches (in) (10 to 30 centimeters (cm)) tall and densely covered with short, white-silky hairs, giving it a silvery appearance. The flowers are deep purple to violet, in a loose or dense 13- to 25-flowered raceme (an inflorescence in which stalked flowers are arranged singly along a central stem). The two-chambered fruits are greatly inflated (Spellenberg 1993, pp. 597–598).

Taxon Biology and Life History

Astragalus lentiginosus var. *coachellae* cohorts (a group of individuals of the same age, recruited into the population at the same time (Lincoln *et al.* 2003, p. 64)) may have different life histories, depending on rainfall and climatic conditions. Occurrences of plants can consist of both reproductive annuals as well as perennials (facultative perennial), and the number of individuals in an area can fluctuate yearly (Meinke *et al.* 2007, p. 6). *Astragalus lentiginosus* var. *coachellae* seeds germinate between fall and early winter (Meinke *et al.* 2007, p. 46). Seasonally dormant root crowns (the point at which the root system and stem of a plant meet) of perennial plants produce new shoots between December and January. Second-year plants can begin to flower as early as December, while plants in their first year usually do not flower until January or February. Flowering continues into April (Meinke *et al.* 2007, p. 6).

Astragalus lentiginosus var. *coachellae* is an outcrosser (a plant that typically cross-pollinates) and is dependent on pollinators. While there are studies that show the plant is able to self-pollinate and generate viable seeds, *A. l.* var. *coachellae* is only marginally reproductively successful without pollinators and produces seed at very low rates. Meinke *et al.* (2007, p. 36) performed a pollinator exclusion study and found that only 2 fruits containing 11 seeds total were produced from 144 flowers limited to self-pollination, compared to 72 fruits containing 596 seeds total produced by 138 flowers left open to insect pollination. Additionally, Mazer and Travers (1992) found that a related variety, *A. l.* var. *piscinensis,* is incapable of autogamy (self-fertilization) and reliant on pollinators. The presence of pollinators vastly improves the success of pollination and the abundance of seed produced by *A. l.* var. *coachellae* plants (Meinke *et al.* 2007, p. 36).

Based on field observations, the primary pollinators of *Astragalus lentiginosus* var. *coachellae* in many instances appear to be nonnative honeybees (*Apis mellifera*) (Meinke *et al.* 2007, p. 36). Meinke *et al.* (2007, p. 36) observed that less than 1 percent of pollinator visits to *A. l.* var. *coachellae* plants were made by native bees (not identified; possibly a species of *Anthidium*); all other pollinator visits were made by nonnative honeybees. We presume the natural pollinator(s) of *A. l.* var. *coachellae* are native insects, most likely native solitary bees, because other varieties of *Astragalus lentiginosus* are known to have solitary bees as their major or essential pollinators (Burks 1979, p. 850; Mazer and Travers 1992, p. 18).

Fruits of *Astragalus lentiginosus* var. *coachellae* are inflated (contain pockets of air as opposed to being flat or compact); this adaptation makes the fruits suited to dispersal by wind when dry (Meinke *et al.* 2007, p. 40), which facilitates gene flow between populations. Insect predation, disease, and mammal herbivory destroy many seeds, leaving the viable seed set as only about 25 percent of the total number of fruits produced (Meinke *et al.* 2007, p. 43). As summer progresses and seed is set, the plants may die or aerial stems may die back. Plants may persist through the fall as dormant root crowns (Meinke *et al.* 2007, p. 6).

Meinke *et al.* (2007, p. 31) observed that the proportion of plants surviving the summer and fall is dependent upon climatic conditions. Although they survive a second year, *Astragalus lentiginosus* var. *coachellae* are generally not long-lived (Meinke *et al.* 2007, p. 33). Plants in the northwestern portion of the range, where rainfall is higher, are more likely than those farther southeast to survive into their second year or longer. Plants that occur in the southeastern extent of the range, which receives less rain, are primarily annuals (Meinke *et al.* 2007, p. 31).

Astragalus lentiginosus var. *coachellae* populations can survive and persist in prolonged drought as dormant seeds in the soil (seed bank) (Sanders and Thomas Olsen Associates 1996, p. 3). Therefore, visible, above-ground plants, which may not be evident at a site each year, are only a partial indication of population size. The

extent of time that the seeds are viable in the soil is not known, although studies on *A. l.* var. *micans* (freckled milk-vetch) demonstrate that buried seeds can germinate after a period of up to 8 years (Pavlik 1987, p. 317). Suitable habitat that lacks above-ground individuals may sustain the taxon through one or more dry years as an undetectable seed bank and dormant root crowns. Therefore, appropriate habitat that lacks above-ground individuals may be important to the long-term survival of *A. l.* var. *coachellae.*

Habitat

Astragalus lentiginosus var. *coachellae* is strongly associated with active, stabilized, ephemeral, and shielded sandy substrates in the Coachella Valley, Riverside County, California (Sanders and Thomas Olsen Associates 1996, p. 3; Barrows and Allen 2007, p. 323). This taxon is primarily found on loose aeolian (wind transported) or fluvial (water transported) sands that form dunes or sand fields, and along margins of sandy washes (Sanders and Thomas Olsen Associates 1996, p. 3).

Most of the sand in the northern Coachella Valley is derived from drainages within the Indio Hills, the San Bernardino Mountains, the Little San Bernardino Mountains, and the San Jacinto Mountains. This sand is moved into and through the valley by the sand transport system. The sand transport system consists of two main parts: (1) The fluvial (water) portion (headwaters, tributaries, and the stream channels within the various drainages surrounding Coachella Valley), and (2) the aeolian (wind) portion (predominantly westerly and northwesterly winds moving through the valley) (Griffiths *et al.* 2002, pp. 5–7). The fluvial and aeolian portions of the systems are capable of moving sand until the velocity of the water or wind decreases to a point that sand is deposited. Both portions of the system are subdivided into three components: source areas, transport areas, and depositional areas.

Fluvial Portion of the Sand Transport System

The water that forms the basis of the fluvial portion of the sand transport system in the Coachella Valley enters the system as precipitation during storm events (Griffiths *et al.* 2002, p. 5). These storm events cause flash flooding, which facilitates the erosion that generates sediment, and moves that sediment downstream in ephemeral streams and washes and eventually into the aeolian transport corridor. Most flooding events only transport small amounts of sediment to the valley floor; flooding events large enough to move large amounts of sediment are very infrequent (for example, the last large flooding event on the Whitewater River occurred in 1938) (Griffiths *et al.* 2002, p. 5).

Fluvial Sand Source Areas

Fluvial source areas are the areas where sediment is generated. In these areas, sediment is eroded from parent rock or sediment deposits and is carried downstream by moving water, which continues to erode rock and generate sediment until it reaches the fluvial transport area. This process occurs mainly in the hills and mountains surrounding Coachella Valley in areas of high relief (greater than 10 percent slope). However, in the Indio Hills/Thousand Palms area (which contains proposed Unit 4 of critical habitat, as described in the Proposed Critical Habitat Designation section below), the fluvial source area consists of alluvial deposits (sand, silt, clay, gravel, or other matter deposited by flowing water) at the base of the Indio Hills. Large episodic floods move sediment trapped in the alluvial deposits into an alluvial fan (a fan-shaped alluvial deposit formed by a stream where its velocity is abruptly decreased), from which the sediment can be transported by wind (Lancaster *et al.* 1993, p. 28). Fluvial sand source areas do not provide habitat for *Astragalus lentiginosus* var. *coachellae* and therefore are not considered to be within the geographical area occupied by the taxon at the time of listing.

Fluvial Sand Transport Areas

The fluvial transport areas are stream channels that convey the sediment generated in fluvial source areas downstream to fluvial depositional areas. Very little erosion of parent rock or sediment deposits takes place in fluvial transport areas compared to fluvial source areas. Fluvial sand transport areas are generally portions of drainages where the slope is less than 10 percent. Fluvial transport channels include portions of the lower reaches of Mission Creek, Morongo Wash, Whitewater River, San Gorgonio River, and Snow Creek (upstream portions of these waterways are considered fluvial source areas because the higher ground slope in these areas allows for erosion/generation of sediment). Fluvial sand transport areas do not provide habitat for *Astragalus lentiginosus* var. *coachellae* and therefore are not considered to be within the geographical area occupied by the taxon at the time of listing.

Fluvial Sand Depositional Areas

The fluvial sand depositional areas are broad, flat, depositional plains or channel terraces where sediment carried by fluvial transport channels is deposited (Griffiths *et al.* 2002, p. 5). During larger flood events, sediment can be deposited on bajada (large, coalescing alluvial fans) surfaces as floodplain deposits. There are four main fluvial sand depositional areas in the Coachella Valley: (1) In the Snow Creek/Windy Point area, which receives sediment from the San Gorgonio River and Snow Creek; (2) in the Whitewater Floodplain area, which receives sediment from the Whitewater River; (3) in the Willow Hole area, which receives sediment from Mission Creek and Morongo Wash; and (4) in the Thousand Palms area, which receives sediment from washes associated with drainages originating in the Indio Hills. These four main fluvial sand depositional areas do provide habitat for *Astragalus lentiginosus* var. *coachellae,* are currently occupied, and were occupied by the taxon at the time of listing.

Aeolian Portion of the Sand Transport System

The aeolian portion of the sand transport system begins where the fluvial portion of the system ends. Northerly and northwesterly winds pick up sand-sized grains of sediment accumulated in fluvial depositional areas, and carry them south/southeast through the valley and into aeolian depositional areas where they form sand fields and dunes (Griffiths *et al.* 2002, p. 7).

Aeolian Sand Source Areas

Aeolian sand source areas are the portions of the fluvial depositional areas that are subject to wind erosion. Winds erode these sediment accumulations and carry sand across aeolian sand transport areas. Between flooding events, which replenish the sediment in fluvial depositional areas, sand available for aeolian transport can be depleted by wind erosion. Figure 6B in Griffiths *et al.* (2002, p. 25) shows the aeolian sand source areas (fluvial depositional areas) associated with the San Gorgonio River, the Whitewater River, and Mission Creek and Morongo Wash. Aeolian sand source areas provide habitat for *Astragalus lentiginosus* var. *coachellae,* are currently occupied, and were occupied by the taxon at the time of listing.

Aeolian Sand Transport Areas

Sand eroded from the aeolian sand source areas is blown into and across the aeolian sand transport areas. Sand may accumulate in aeolian transport areas when ample sand is available in upwind source areas; conversely, aeolian transport areas may be depleted of sand when sand is lacking upwind. Figure 6B in Griffiths *et al.* (2002, p. 25) shows the aeolian sand transport areas for the portions of the sand transport system associated with the San Gorgonio River, the Whitewater River, and Mission Creek and Morongo Wash. Aeolian sand transport areas provide habitat for *Astragalus lentiginosus* var. *coachellae,* are currently occupied, and were occupied by the taxon at the time of listing.

Aeolian Sand Depositional Areas

Sand carried by wind through the sand transport areas is deposited when the velocity of the wind decreases sufficiently. This occurs mainly where wind is slowed by vegetation (for example, honey mesquite in the Willow Hole area), other objects, or geological features. In general, sand formations (for example, sand dunes and sand fields) persist in depositional areas, whereas sand accumulations in transport areas are more ephemeral. Aeolian sand depositional areas provide habitat for *Astragalus lentiginosus* var. *coachellae,* and support, currently and at the time of listing, the highest numbers of the taxon.

The fluvial and aeolian processes discussed above have been disrupted in many areas by development, alteration of stream flow, and the proliferation of nonnative plants. These threats to the persistence of *Astragalus lentiginosus* var. *coachellae* habitat are discussed further in the *Special Management Considerations or Protection* section below.

Sand Formations

Sand is found in various types of formations within the Coachella Valley, including but not limited to: Active sand dunes, stabilized or partially stabilized dunes, active sand fields, stabilized sand fields, shielded sand dunes and fields, ephemeral sand fields, and alluvial sand deposits on floodplain terraces of active washes. Each of these sand deposit formations provides habitat for *Astragalus lentiginosus* var. *coachellae* to varying degrees. A discussion of threats that are degrading the quality of *A. l.* var. *coachellae* habitat by impacting these sand formations (for example, development, unauthorized off-highway vehicle use, nonnative plants, and groundwater pumping) is included below in the *Special Management Considerations or Protection* section.

Active and Stabilized or Partially Stabilized Sand Dunes

Active sand dunes are almost barren expanses of moving sand with sparse, if any, perennial shrub cover. For *Astragalus lentiginosus* var. *coachellae,* active sand dunes provide suitable habitat. Active sand dunes may intermix with stabilized or partially stabilized dunes or become stabilized over time; stabilized sand dunes have similar sand accumulations and formations but are stabilized by shrubs, scattered low annuals, and perennial grasses. Stabilized or partially stabilized dunes are less vulnerable to loss of sand due to wind and therefore provide more stable habitat for long-term *A. l.* var. *coachellae* persistence (Griffiths *et al.* 2002, pp. 6–8).

Active Sand Fields

Astragalus lentiginosus var. *coachellae* also occurs in active sand fields that are similar to active sand dunes, but are smaller, shallower sand accumulations of insufficient depth to form dunes. Sand fields may form hummocks, which are local accumulations of sand that form when sand accumulates around, and is held in place by, shrubs or clumps of vegetation (for example, *Prosopis* spp.-mesquite hummocks). Shrubs that form hummocks are important for the maintenance of *A. l.* var. *coachellae* habitat where the plants occur because they prevent sand from being removed from depositional areas faster than it can be replaced by natural sand transport processes. In areas where mesquite plants are being lost (such as Willow Hole and Thousand Palms), aeolian processes are removing sand faster than it can be replenished (see the *Special Management Considerations or Protection* section below for further discussion of loss of mesquite hummocks due to groundwater pumping).

Stabilized Sand Fields

Stabilized sand fields are similar to active sand fields but contain sand accumulations that are stabilized by vegetation or are armored, a process where the wind picks up and moves smaller particles and leaves behind larger grains and gravels, forming an ''armor'' that prevents wind from moving additional smaller particles trapped below (Sharp and Saunders 1978, p. 12). Armored sand fields are temporarily stable, becoming active when the armor is disturbed over large areas (such as by flood, severe wind events, or human activities), or new sand is deposited from upwind fluvial depositional areas (Sharp and Saunders 1978, p. 12).

Shielded Sand Dunes and Fields

Shielded sand dunes and fields are similar to the sand formations described above, except that sand source and transport systems that would normally replenish these areas have been interrupted or the dunes are otherwise shielded by human development (CVAG 2007, p. 4.7–5). These shielded areas support large occurrences of *Astragalus lentiginosus* var. *coachellae* that may contribute to the conservation of the taxon; however, the natural processes sustaining the habitat have been permanently removed.

Ephemeral Sand Fields

Astragalus lentiginosus var. *coachellae* also occurs in ephemeral sand fields, which occur in areas where the rate at which sand is transported out of the area by wind exceeds the rate at which sand is replenished by upwind flood deposition events, resulting in a transient aeolian sand habitat that pulses after significant flood events deliver new sand to the aeolian transport corridor (Barrows and Allen 2007, p. 323; USFWS GIS data). This type of formation generally occurs at the western end of the Coachella Valley, where wind velocities are the highest (Barrows and Allen 2007, p. 323).

Alluvial Fans or Flood Plains

Astragalus lentiginosus var. *coachellae* can also occur on alluvial soils or on flood plain terraces (with little aeolian sands) in large alluvial fans, such as along Morongo Wash in Desert Hot Springs (J. Avery, USFWS Biologist, pers. obs. 2004–2009). Some of these formations have moderate amounts of diffuse disturbances and still support *A. l.* var. *coachellae* (Meinke *et al.* 2007, p. 21). Although the taxon can tolerate low levels of disturbance, plants do not typically persist into their second year in these conditions. Additionally, Meinke *et al.* (2007, p. 63) found that low levels of disturbance may help to promote seed germination. Therefore, the early stages and first-year plants of *A. l.* var. *coachellae* may be capable of surviving low-level disturbances that occur in these formations (Meinke *et al.* 2007, p. 63).

Suitable habitat may be transitory, and consequently currently unoccupied areas may become suitable following fluvial or aeolian events, and vice versa

(Lancaster 1995, p. 231). Conservation of the variety of sandy substrate types that may support the taxon is important for the conservation of *Astragalus lentiginosus* var. *coachellae* because of the dynamics of the aeolian sand transport processes. The life history of *A. l.* var. *coachellae* is uniquely suited to the transitory nature of its habitat, and the occurrences of the taxon will likely be impacted to the extent that the fluvial or aeolian sand transport systems are disrupted.

Plant Associations

Astragalus lentiginosus var. *coachellae* commonly occurs in association with Desert Dunes or Creosote bush—white burr sage-scrub vegetation (Sawyer *et al.* 2009, pp. 566–569, 876–877). These vegetation types are associated with rainfall patterns, shifting from west to east across the Coachella Valley. The vegetation generally consists of dispersed perennial shrubs, with intervening shrubless tracts providing space for wind dispersal of *A. l.* var. c*oachellae* fruits.

Woody perennials, such as *Lepidospartum squamatum* (California broomsage), *Hymenocela salsola* (cheesebush), *Ambrosia dumosa* (burrobush), and *Psorothamnus arborescens* (California dalea) are typically associated with *Astragalus lentiginosus* var. *coachellae* in the western and relatively high-rainfall areas near the San Gorgonio Pass (Meinke *et al.* 2007, p. 21). These perennial taxa along with *Larrea tridentata* (creosote bush) and annuals such as *Rafinesquia neomexicana* (California chicory) and *Camissonia pallida* (pale sun cup) are characteristic of the sandy wash habitat at Snow Creek (Meinke *et al.* 2007, pp. 22–24). This habitat type is associated with the fluvial sand deposits on floodplain terraces (discussed above).

In the southeastern extent of the range, where rainfall is the lowest, *Astragalus lentiginosus* var. *coachellae* occurs with annuals such as *Abronia villosa* (desert sand verbena), *Oenothera deltoides* (dune primrose), *Geraea canescens* (desert sunflower), *Oligomeris linifolia* (leaved cambess), *Astragalus aridis* (annual desert milk-vetch), and *Baileya pauciradiata* (Colorado Desert marigold) (Meinke *et al.* 2007, p. 21) on primary dunes at the Coachella Valley National Wildlife Refuge (Meinke *et al.* 2007, p. 17). This habitat type is associated with active sand dunes or partially stabilized sand dunes (discussed above). *Astragalus lentiginosus* var. *coachellae* is variously found with *Larrea tridentata* (creosote bush), *Psorothamnus emoryi* (Emory dalea), *Atriplex canescens* (fourwing saltbush), *Dicoria canescens* (desert dicoria), *Achnatherum* (as *Oryzopsis*) *hymenoides* (Indian ricegrass), *Croton californicus* (California croton), and *Petalonyx thurberi* (sandpaper plant) on low-shifting dunes; sand fields; and small, isolated dunes (Meinke *et al.* 2007, pp. 22–24).

Salsola tragus (Russian thistle), *Schismus barbatus* (Mediterranean grass), *Tamarix* spp. (salt-cedar), and *Brassica tournefortii* (Sahara mustard) are nonnative plants known to occur with and threaten *Astragalus lentiginosus* var. *coachellae* via competition for resources such as water and nutrients (Meinke *et al.* 2007, p. 26). The latter is considered to pose the most serious threat by competitive exclusion and by restricting natural movement of sand (Meinke *et al.* 2007, p. 24). Further discussion of nonnative plants is presented in the *Special Management Considerations or Protection* section below.

Spatial Distribution, Historical Range, and Population Size

Astragalus lentiginosus var. *coachellae* has a distribution limited to the Coachella Valley, Riverside County, in the southern California portion of the Colorado Desert. At the time of listing, the distribution of the taxon was equivalent to the historical geographic range of the taxon. The range of *A. l.* var. *coachellae* has remained effectively the same since the taxon was listed as endangered in 1998 (63 FR 53596; October 6, 1998); however, the spatial distribution within that range has changed as development has eliminated occurrences. At the time of listing, there were an estimated 25 extant occurrences of *A. l.* var. *coachellae,* and the quantity of suitable habitat was considered to be decreasing due to continuing direct and indirect impacts associated with development (63 FR 53596; October 6, 1998). Additional occurrences have been detected within the historical geographic range of the taxon since 1998; however, it is likely that these occurrences existed at the time of listing and we are aware of them now because of increased survey efforts. Throughout this rule we refer to all occurrences as ''occupied at the time of listing'' regardless of whether the areas were documented before or after the taxon was listed.

The majority of verified historical and extant occurrences of *Astragalus lentiginosus* var. *coachellae* are found in the northern Coachella Valley, from just east of the community of Cabazon eastward to the dunes off Washington Street, in the city of Thousand Palms, north and west of the city of Indio, within approximately 3 miles (mi) (5 kilometers (km)) of Interstate 10 (Barrows 1987 (map); CNDDB 2011). Collections northeast of Desert Center in the Chuckwalla Valley, east of the Coachella Valley, were thought at the time of listing to represent disjunct occurrences of *A. l.* var. *coachellae* (63 FR 53598). However, these have since been determined to most likely be *A. l.* var. *variabilis* (Meinke *et al.* 2007, p. 1).

Periodic surveys and observations indicate that the extent and success of germination events and surviving reproductive population sizes may differ widely from year to year, depending on climatic and environmental conditions (for example, Barrows 1987, pp. 1–2). Densities of standing plants can vary considerably among occurrences across the taxon's range in any given year. This makes meaningful assessment of total numbers of *Astragalus lentiginosus* var. *coachellae* plants (that is, population size) difficult. Additionally, as discussed above, the number of standing plants at any given time is only a partial indication of population size because seeds can persist in the ground (seed bank) for a number of years (Sanders and Thomas Olsen Associates 1996, p. 3). The number of individuals present may also be underestimated if surveys are conducted at a time or place where aerial stems have died back and broken off leaving the root crown, which could be overlooked. The historical abundance of *A. l.* var. *coachellae* plants is unknown (Sanders and Thomas Olsen Associates 1996, p. 3).

Previous Federal Actions

The following section summarizes the previous Federal actions since *Astragalus lentiginosus* var. *coachellae* was listed as endangered on October 6, 1998 (63 FR 53596); please refer to this final listing rule for a discussion of Federal actions that occurred prior to the taxon's listing.

At the time of listing, we determined that designation of critical habitat was ''not prudent'' (63 FR 53596). On November 15, 2001, the Center for Biological Diversity (CBD) and the California Native Plant Society (CNPS) filed a lawsuit against the Secretary of the Interior and the Service challenging our ''not prudent'' determinations for eight plant taxa, including *Astragalus lentiginosus* var. *coachellae* (*Center for Biological Diversity, et al.* v. *Norton,* case number 01–cv–2101 (S.D. Cal.)). A second lawsuit asserting the same challenge was filed on November 21, 2001, by the Building Industry Legal

Defense Foundation (*Building Industry Legal Defense Foundation* v. *Norton,* case number 01–cv–2145 (S.D. Cal.)). The parties in both cases agreed to remand the critical habitat determinations for the eight plant taxa at issue to the Service for reconsideration. On July 1, 2002, the Court directed us to reconsider our not prudent determination and if we determined that designation was prudent, submit to the **Federal Register** for publication a proposed critical habitat designation for *A. l.* var. *coachellae* by November 30, 2004, and to submit to the **Federal Register** for publication a final rule designating critical habitat by November 30, 2005. The proposed rule to designate critical habitat for *A. l.* var. *coachellae* published in the **Federal Register** on December 14, 2004 (69 FR 74468). The final rule designating critical habitat for *A. l.* var. *coachellae* published in the **Federal Register** on December 14, 2005 (70 FR 74112).

The Center for Biological Diversity filed a lawsuit on January 14, 2009, claiming the Service failed to designate adequate critical habitat for *Astragalus lentiginosus* var. *coachellae* (*CBD* v. *Kempthorne,* case number ED–cv–09–0091 VAP(AGRx) (C.D. Cal.)). In a settlement agreement dated November 14, 2009, we agreed to reconsider the critical habitat designation for *A. l.* var. *coachellae.* The settlement requires the Service to submit a proposed revised critical habitat designation for *A. l.* var. *coachellae* to the **Federal Register** by August 18, 2011, and submit a final revised critical habitat designation to the **Federal Register** by February 14, 2013.

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 ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner 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 or 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 or 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 or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the 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 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 for 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 Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we determine which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Climate Change and Critical Habitat

''Climate'' refers to an area's long-term average weather statistics (typically for at least 20- or 30-year periods), including the mean and variation of surface variables such as temperature, precipitation, and wind, whereas ''climate change'' refers to a change in the mean or variability or both of climate properties that persists for an extended period (typically decades or longer), whether due to natural processes or human activity (Intergovernmental Panel on Climate Change (IPCC) 2007a, p. 78). Although changes in climate occur continuously over geological time, changes are now occurring at an accelerated rate. For example, at continental, regional, and ocean basin scales, recent observed changes in long-term trends include: A substantial increase in precipitation in eastern parts of North America and South America, northern Europe, and northern and central Asia; an increase in intense tropical cyclone activity in the North Atlantic since about 1970 (IPCC 2007a, p. 30); and an increase in annual average temperature of more than 2 °F (1.1 °C) across the United States since 1960 (Global Climate Change Impacts in the United States (GCCIUS) 2009, p. 27). Examples of observed changes in the physical environment include: An increase in global average sea level; declines in mountain glaciers and average snow cover in both the northern and southern hemispheres (IPCC 2007a, p. 30); substantial and accelerating reductions in Arctic sea-ice (e.g., Comiso *et al.* 2008, p. 1); and a variety of changes in ecosystem processes, the distribution of species, and the timing of seasonal events (e.g., GCCIUS 2009, pp. 79–88).

The IPCC used Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios to make projections of climate change globally and for broad regions through the 21st century (Meehl *et al.* 2007, p. 753; Randall *et al.* 2007, pp. 596–599), and reported these projections using a framework for characterizing certainty (Solomon *et al.* 2007, pp. 22–23). Examples include: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas, and the frequency of heavy precipitation events will increase over most areas; and (3) it is likely that increases will occur in the incidence of extreme high sea level (excludes tsunamis), intense tropical cyclone activity, and the area affected by droughts (IPCC 2007b, p. 8, Table SPM.2). More recent analyses using a different global model and comparing other emissions scenarios resulted in similar projections of global temperature change across the different approaches (Prinn *et al.* 2011, pp. 527, 529).

All models (not just those involving climate change) have some uncertainty associated with projections due to assumptions used, data available, and features of the models; with regard to climate change this includes factors such as assumptions related to emissions scenarios, internal climate variability, and differences among models. Despite this, however, under all global models and emissions scenarios, the overall projected trajectory of surface air temperature is one of increased warming compared to current conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Climate models, emissions scenarios, and associated assumptions, data, and analytical techniques will continue to be refined, as will interpretations of projections, as more information becomes available. For instance, some changes in conditions are occurring more rapidly than initially projected, such as melting of Arctic sea ice (Comiso *et al.* 2008, p. 1; Polyak *et al.* 2010, p. 1797), and since 2000 the observed emissions of greenhouse gases, which are a key influence on climate change, have been occurring at the mid- to higher levels of the various emissions scenarios developed in the late 1990s and used by the IPPC for making projections (e.g., Raupach *et al.* 2007, Figure 1, p. 10289; Pielke *et al.* 2008, entire; Manning *et al.* 2010, Figure 1, p. 377). Also, the best scientific and commercial data available indicate that average global surface air temperature is increasing and several climate-related changes are occurring and will continue for many decades even if emissions are stabilized soon (e.g., Meehl *et al.* 2007, pp. 822–829; Church *et al.* 2010, pp. 411–412; Gillett *et al.* 2011, entire).

Changes in climate can have a variety of direct and indirect impacts on species, and can exacerbate the effects of other threats. Rather than assessing ''climate change'' as a single threat in and of itself, we examine the potential consequences to species and their habitats that arise from changes in environmental conditions associated with various aspects of climate change. For example, climate-related changes to habitats, predator-prey relationships, disease and disease vectors, or conditions that exceed the physiological tolerances of a species, occurring individually or in combination, may affect the status of a species. Vulnerability to climate change impacts is a function of sensitivity to those changes, exposure to those changes, and adaptive capacity (IPCC 2007, p. 89; Glick *et al.* 2011, pp. 19–22). As described above, in evaluating the status of a species, the Service uses the best scientific and commercial data available, and this includes consideration of direct and indirect effects of climate change. As is the case with all potential threats, if a species is currently affected or is expected to be affected by one or more climate-related impacts, this does not necessarily mean the species is an endangered or threatened species as defined under the Act. If a species is listed as endangered or threatened, this knowledge regarding its vulnerability to, and impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

While projections from global climate model simulations are informative and in some cases are the only or the best scientific information available, various downscaling methods are being used to provide higher-resolution projections that are more relevant to the spatial scales used to assess impacts to a given species (see Glick *et al.,* 2011, pp. 58–61). With regard to the area of analysis for *Astragalus lentiginosus* var. *coachellae,* downscaled projections are not available.

Critical Habitat Dynamics

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy

findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with sections 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 propose as critical habitat, we consider the physical or 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 or biological features essential for *Astragalus lentiginosus* var. *coachellae* from studies of this taxon's habitat, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596), and the 5-year review for *A. l.* var. *coachellae* signed on September 1, 2009 (Service 2009). We have determined that the following physical and biological features are essential to *A. l.* var. *coachellae:*

Space for Individual and Population Growth and for Normal Behavior

Astragalus lentiginosus var. *coachellae* has a limited distribution. Within its limited range, *A. l.* var. *coachellae* requires space for the natural fluvial and aeolian transport and deposition of the sandy substrates on which it grows. Protection of aeolian and fluvial processes is crucial to maintain habitat for *A. l.* var. *coachellae.* These processes are responsible for transporting and depositing sand that is the foundation of habitat for *A. l.* var. *coachellae.* Disturbance or curtailment of these processes can result in a lack of adequate amounts of sand to produce the different formations that support habitat (for example, active dunes and sand fields). Protecting aeolian sand transport corridors between *A. l.* var. *coachellae* occurrences is also important for the dispersal of the wind-blown fruits into temporally unoccupied habitat to reestablish reproductive occurrences (metapopulation structure). *Astragalus lentiginosus* var. *coachellae* is also dependent upon insect pollinators (Meinke *et al.* 2007, p. 37). Protecting aeolian sand transport corridors also provides space for pollinator movement between occurrences, which is important for the long-term maintenance of occurrences. Therefore, based on the information above, we identify fluvial and aeolian sand transport and deposition processes, and aeolian sand transport corridors for seed dispersal and pollinator movement, to be physical or biological features for this taxon.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Astragalus lentiginosus var. *coachellae* is primarily found on various types of sand formations including active sand dunes, stabilized or partially stabilized dunes, active sand fields, stabilized sand fields, shielded sand dunes and fields, ephemeral sand fields, and alluvial sand deposits on floodplain terraces of active washes. Each of these sand deposit formations provides habitat for *A. l.* var. *coachellae* to varying degrees (see *Habitat* section above for further discussion of sand formations that support the taxon). The taxon also requires moving water and air to transport sand from sand source areas to occupied habitat areas as discussed above. *Astragalus lentiginosus* var. *coachellae* can be found in abundance on shielded sand fields, and the *A. l.* var. *coachellae* plants in these areas are important for the conservation of the taxon. However, we do not consider shielded habitat to contain the physical or biological features essential to the conservation of the taxon, because these areas are permanently cut off from the sand transport system. Shielded areas, although they currently contain sand formations, will eventually lose these formations as the winds remove sand over time. Therefore, based on the information above, we identify the other above-mentioned sand formations to be a physical or biological feature for this taxon.

The physiological and soil nutritional needs of *Astragalus lentiginosus* var. *coachellae* are not known at this time. The taxon shows variation in productivity and life-history patterns that appear to coincide with local or temporal variations in precipitation (wetter years result in higher levels of seed germination (e.g., Barrows 1987, p. 2)) and across its range (plants in the northwestern portion of the range where rainfall is higher are more likely to grow larger and survive into their second year or longer (Meinke *et al.* 2007, p. 25)). However, the specific optimal soil moisture range for the taxon is unknown.

Additionally, the taxon does not grow in some areas that appear to contain suitable habitat. For example, *Astragalus lentiginosus* var. *coachellae* grows on some portions of the alluvial sand deposits on floodplain terraces of Morongo Wash, but not others, and it does not grow in the bed of the wash when the bed is dry even though the bed contains sandy substrates (J. Avery, USFWS Biologist, pers. obs. 2004–2009). These apparent inconsistencies may be due to microsite differences (such as nutrient availability, soil microflora or microfauna, soil texture, or moisture). Research is needed to determine the specific nutritional and physiological requirements of *A. l.* var. *coachellae.*

Sites for Reproduction

Astragalus lentiginosus var. *coachellae* plants, like most plants, do not require areas for breeding or reproduction other than the areas they occupy and any area necessary for pollinators and seed dispersal. Reproduction sites accommodate all phases of the plant's life history. Seeds likely require certain soil conditions to germinate (for example, moisture and nutrient levels within a certain range, or close proximity to the soil surface), but as discussed above, we do not yet know what those requirements are. In addition, wind is important for the dispersal of the wind-blown fruits into temporally unoccupied habitat (metapopulation structure) of *A. l.* var. *coachellae.*

The primary visitors of *Astragalus lentiginosus* var. *coachellae* appear to be nonnative honeybees (*Apis mellifera*) (Meinke *et al.* 2007, p. 36). These bees appear to be flexible in their choice of nesting sites. For example, bee nests were found in discarded tires, in *Tamarix* spp. trees, and under a bridge near *A. l.* var. *coachellae* occurrences (Meinke *et al.* 2007, p. 36).

Native solitary bees, which may be the natural pollinators of *Astragalus lentiginosus* var. *coachellae,* utilize several plant species as pollen and nectar sources (Karron 1987, p. 188). Maintaining adequate populations of these bees likely depends on the presence of a variety of native plant species in sufficient numbers within or near *A. l.* var. *coachellae* occurrences, as well as between *A. l.* var. *coachellae* occurrences, to facilitate gene flow between occurrences. We do not know, however, why native bees have not yet been observed pollinating *A. l.* var. *coachellae.* Until specific pollinators for *A. l.* var. *coachellae* are identified, we are unable to consider protection of their specific habitat explicitly via this critical habitat designation. Therefore, based on the information above, we identify aeolian sand transport corridors for seed dispersal and pollinator movement to be a physical or biological feature for this taxon.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Taxon

Astragalus lentiginosus var. *coachellae* is primarily found on loose aeolian (wind-transported) or fluvial (water-transported) sands that are located on dunes or sand fields, and along disturbed margins of sandy washes. Within active, stabilized, and ephemeral sand fields and dunes, *A. l.* var. *coachellae* tends to occur in coarse sands in the margins of dunes, but not in most active windswept sand areas (Coachella Valley MSHCP/NCCP 2007, pp. 9–27) (see *Habitat* section above for more detailed description of active and stabilized sand fields and dunes). Therefore, based on the information above, we identify substrate components and conditions suitable to support *A. l.* var. *coachellae* to be a physical or biological feature for this taxon.

The sandy substrates that are suitable for *Astragalus lentiginosus* var. *coachellae* are dynamic in terms of spatial mobility and tendency to change back and forth from active to stabilized (Lancaster 1995, p. 231). This has significant consequences for *A. l.* var. *coachellae* because the plant's population densities vary with different types of sandy substrates. Conserving the dynamics of the fluvial and aeolian sand transport processes is important for the conservation of *A. l.* var. *coachellae* because those dynamics create a variety of substrate types that support occurrences of the taxon.

The dynamics of the sandy substrates in the Coachella Valley are controlled by two main factors: (1) The supply of sand-sized sediment released, transported, and deposited by the fluvial system (water-transported); and (2) the rate of aeolian (wind-blown) transport (Griffiths *et al.* 2002, pp. 4–8). The latter is affected primarily by wind fetch (the length of unobstructed area exposed to the wind).

Most of the suitable sandy habitats in the Coachella Valley are generated from several drainage basins in the San Bernardino, Little San Bernardino, and San Jacinto Mountains and Indio Hills (Lancaster *et al.* 1993, pp. i–ii; Griffiths *et al.* 2002, p. 10). Sediment is eroded and washed from fluvial source areas (hill slopes and channels in the local hills and alluvial deposition areas in the Thousand Palms area (Unit 4)), and is transported downstream in stream channels and within alluvial fans during infrequent flood events (Griffiths *et al.* 2002, p. 7). Fluvial transport is the dominant mechanism that moves sediment into fluvial depositional areas in the Coachella Valley (Griffiths *et al.* 2002, p. 7). The largest depositional area in the Coachella Valley is in the Whitewater River floodplain, northwest of the City of Palm Springs (Griffiths *et al.* 2002, p. 5). For sufficient fine-grained sands to reach the aeolian system on the valley floor and support *Astragalus lentiginosus* var. *coachellae,* it is necessary to protect major fluvial channels that transport source sand from the surrounding drainage basins as well as bajadas and depositional areas. The Coachella Valley MSHCP/NCCP identifies the protection of the above-mentioned essential ecological processes, including sand source/transport systems, as a species conservation goal.

The San Gorgonio Pass is between the two highest peaks in southern California: San Gorgonio Mountain (11,510 feet (ft) (3,508 meters (m))) to the north and San Jacinto Mountain (10,837 ft (3,303 m)) to the south. Westerly winds funneling through San Gorgonio Pass are the dominant mechanism by which aeolian sands are transported from bajadas and fluvial depositional areas to aeolian deposits in the Coachella Valley (Sharp and Saunders 1978, p. 12; Griffiths *et al.* 2002, p. 1). *Astragalus lentiginosus* var. *coachellae* is associated with various types of sand formations that are formed by these aeolian deposits (Sanders and Thomas Olsen Associates 1996, p. 3). In order to maintain adequate replenishment of sands into aeolian depositional areas, it is important that sand-transport corridors between fluvial and aeolian depositional areas remain unobstructed for wind passage. The strong wind energy in this region can also erode sands from wash margins and suitable *A. l.* var. *coachellae* habitat, temporally shifting *A. l.* var. *coachellae* habitat into other areas, and thereby allowing the taxon to be dispersed and to colonize new areas or recolonize previously occupied areas. As a result, it is also necessary to protect sufficient space to allow for these dynamic aeolian sand deposits to shift in their distribution.

Primary Constituent Elements for Astragalus lentiginosus var. coachellae

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of *Astragalus lentiginosus* var. *coachellae* in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements (PCEs) to be the specific elements of physical or biological features that provide for a species' life-history processes essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the taxon's life-history processes, we determine that the primary constituent element specific to *Astragalus lentiginosus* var. *coachellae* is:

Sand formations associated with the sand transport system in Coachella Valley, which:

(a) Include active sand dunes, stabilized or partially stabilized sand dunes, active or stabilized sand fields (including hummocks forming on leeward sides of shrubs), ephemeral sand fields or dunes, and fluvial sand deposits on floodplain terraces of active washes.

(b) Are found within the fluvial sand depositional areas, and the aeolian sand source, transport, and depositional areas of the sand transport system.

(c) Are comprised of sand originating in fluvial sand source areas (unoccupied by the taxon at the time of listing) in the hills surrounding Coachella Valley, which is moved into the valley by water (fluvial transport) and through the valley by wind (aeolian transport).

We consider the fluvial sand depositional areas and the aeolian sand source, transport, and depositional areas of the sand transport system described in (b) to be within the geographical area occupied by *Astragalus lentiginosus* var. *coachellae* at the time the taxon was listed, whereas the fluvial sand source areas referenced in (c) are considered to be outside the geographical area occupied by the taxon at the time of

listing. The sand formations provide substrate components and conditions suitable for growth. The aeolian sand transport corridor also provides space for seed dispersal and pollinator movement needed to maintain sand movement and genetic diversity of the taxon.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection. The features essential to the conservation of this taxon may require special management considerations or protection to reduce the following threats: direct and indirect effects of urban and recreational (e.g., golf course) development, nonnative plant species, unauthorized off-highway vehicle (OHV) impacts, mining and other activities or structures that alter streamflow, and groundwater pumping.

Development

The Coachella Valley continues to attract increasing human populations and associated urban development pressure. Urban and recreational development can impact *Astragalus lentiginosus* var. *coachellae* directly by converting suitable, often occupied, habitat to structures, infrastructure, landscaping, or other non-natural ground cover that does not support the growth of the taxon. Structures and landscaping can also impact *A. l.* var. *coachellae* habitat indirectly by altering local wind and fluvial regimes. Such alterations can result in degraded *A. l.* var. *coachellae* habitat downstream or downwind of developed areas by inhibiting the movement of loose, unconsolidated sands needed for the formation and maintenance of suitable habitat vital to the growth and reproduction of the taxon. If the sand transport system is altered, sand cannot move through the valley to replace sands lost from the system downstream/downwind as a result of ongoing fluvial and aeolian processes.

Special management considerations or protection are needed within critical habitat areas to address the threats posed to *Astragalus lentiginosus* var. *coachellae* habitat by urban and recreational development. Management activities that could ameliorate these threats include, but are not limited to: Protection of lands that support suitable habitat and associated sand transport, and siting future development such that disruption of fluvial and aeolian sand transport processes is minimized and deposition areas are preserved. These management activities will protect the physical or biological features for the taxon by decreasing the direct loss of habitat to development and by helping to maintain the sand transport system and sand deposition areas that together provide the sand formations that are necessary components of *A. l.* var. *coachellae* habitat.

Preserving large areas of suitable habitat with intact wind and depositional regimes and preserving areas vital to the maintenance of the sand transport system are important to prevent further habitat loss. Preserving a variety of different habitat types (e.g., sand dunes, sand fields) throughout the range of the taxon should help maintain the genetic and demographic diversity (individuals in different age classes at any given time) of *Astragalus lentiginosus* var. *coachellae.*

Designing and orienting structures and landscaping such that they minimize the blockage of sand movement will also help to prevent the disruption of the sand transport system and further habitat loss. For example, orienting a building so that the face of the building is at an oblique angle with the prevailing wind direction may allow more sand to move around the building than would occur if the face of the building were at a right angle with the direction of sand movement. Planning development such that structures and landscaping are located outside of areas vital to sand transport will also help lessen the degradation of *Astragalus lentiginosus* var. *coachellae* habitat.

Nonnative Plant Species

Invasive nonnative plant species, such as *Brassica tournefortii* (Saharan mustard), *Schismus barbatus* (Mediterranean grass), and *Salsola tragus* (Russian-thistle), can impact *Astragalus lentiginosus* var. *coachellae* habitat by stabilizing loose sediments and reducing transport of sediment to downwind areas, thus making habitat unsuitable for *A. l.* var. *coachellae.* Additionally, *Tamarix* spp. (salt cedar) can create wind breaks in the aeolian transport system that can decrease the movement of sand through the valley. Dense cover of nonnative taxa may also impede the natural wind dispersal of the mature fruits of *A. l.* var. *coachellae.* This will curtail natural reproduction within a given site and natural dispersal to repopulate temporally unoccupied sites.

Management activities that could ameliorate these threats include, but are not limited to: Active weeding of nonnative plant species and targeted herbicide application. These management activities will protect the physical or biological features for the taxon by helping to control nonnative plants, which can degrade *Astragalus lentiginosus* var. *coachellae* habitat.

Unauthorized Off-Highway Vehicle (OHV) Impacts

Unauthorized OHV use may impact *Astragalus lentiginosus* var. *coachellae* habitat by making substrate conditions unsuitable for growth through the alteration of the fluvial sand transport system, changes in plant community composition, and disruption of the substrate, which can cause soils to lose moisture and may also impact soil microflora or microfauna (Service 2008, p. 8766). The native plant community associated with *A. l.* var. *coachellae* habitat allows for sand movement and does not inhibit dispersal. Disturbance from OHV use can affect the plant composition of the native plant community. Management activities that could ameliorate the threat of unauthorized OHV use include fencing and signage of habitat areas to assist in educating the public and engaging local authorities to improve the enforcement of laws prohibiting OHV trespass. Control of unauthorized OHV use in habitat occupied by *A. l.* var. *coachellae* has recently improved through increased local law enforcement in some areas, including lands managed by Bureau of Land Management (BLM), although it remains an issue on many privately owned lands.

Alteration of Stream Flow

The construction and operation of water percolation ponds, sand and gravel mines, and, to a lesser degree, dikes and debris dams can negatively impact *Astragalus lentiginosus* var. *coachellae* habitat if they prevent the fluvial transport of sand to habitat areas through diversion, channelization, or damming (Griffiths *et al.* 2002, pp. 13, 23). For example, the percolation ponds constructed on BLM and Coachella Valley Water District lands in the Whitewater River floodplain have substantially altered the transport of sand to habitat areas downstream and downwind, resulting in the severe degradation of sand and loss of *A. l.* var. *coachellae* habitat in these areas (Griffiths *et al.* 2002, pp. 6, 42).

Management activities that could ameliorate the threats posed to *Astragalus lentiginosus* var. *coachellae* habitat by alteration of stream flow include, but are not limited to: Working with concerned parties to find and

implement alternatives that allow for the removal or reconfiguration of existing barriers to fluvial sand transport, restoring sand transport to a more natural state, and working with concerned parties to design and implement future projects to maximize conservation/restoration of natural sand transport. These management activities will protect the physical or biological features for the taxon by helping to maintain the sand transport system that provides the sand that constitutes *A. l.* var. *coachellae* habitat.

Groundwater Pumping

Hummocks formed by *Prosopis* spp. (mesquite) and other shrubs contribute to the creation and stabilization of sand dunes and sand fields by anchoring dunes and making them less vulnerable to wind erosion. Wind-blown sand accumulates in areas where wind speed is reduced (by topographical features, rocks, shrubs, or other objects) near the ground (Fryberger and Ahlbrandt 1979, p. 440). The shrubs in the hummock help to stabilize and support sand deposits around the hummock, which support *Astragalus lentiginosus* var. *coachellae* occurrences and its sand dune and field habitat. The mesquite shrubs in the Banning Fault/Willow Hole area are senescent and appear to be dying, likely due to ongoing artificial lowering of groundwater levels in the sub-basin to provide water for human use (Mission Springs Water District 2008, p. 4–97). Similar mesquite hummocks that existed historically have already been lost in and near the Thousand Palms Reserve (in the Thousand Palms Conservation Area), likely due to groundwater withdrawals (based on water well log data, field observation, and aerial photos) (J. Avery, pers. obs. 2006). Loss of the anchoring mesquite shrubs will lead to the loss of the associated hummocks over time by the erosion of sand deposits, therefore affecting *A. l.* var. *coachellae* habitat created or maintained by the trapping of sand.

Management activities that could ameliorate the threats posed to *Astragalus lentiginosus* var. *coachellae* habitat by groundwater pumping include, but are not limited to: Subsurface irrigation of existing mesquite plants, and the planting, restoring, and irrigating of mesquite in areas where groundwater levels have fallen and caused the degradation or loss of the mesquite plants that hold sand in place, and which will ultimately result in the loss of the taxon's essential substrate. These management activities will protect the physical or biological features for *A. l.* var. *coachellae* by helping to maintain much of the extant mesquite hummocks within the range of the taxon and by restoring an undetermined acreage of historical mesquite hummocks that maintain (or will maintain) portions of *A. l.* var. *coachellae* habitat.

In summary, threats to *Astragalus lentiginosus* var. *coachellae* habitat include urban and recreational development, nonnative plant species, OHV impacts, alteration of stream flow, and groundwater pumping. We find that the occupied areas proposed as revised critical habitat contain the physical or biological features essential to the conservation of *A. l.* var. *coachellae,* and that these features may require special management considerations or protection. Special management considerations or protection may be required to eliminate, or reduce to a negligible level, the threats affecting each unit or subunit and to preserve and maintain the essential features that the proposed critical habitat units and subunits provide to *A. l.* var. *coachellae.* Additional discussions of threats facing individual sites are provided in the individual unit descriptions in the Proposed Critical Habitat Designation section below.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of *Astragalus lentiginosus* var. *coachellae.* For example, drainage areas that provide source material for the aeolian sand in the habitat (fluvial sand source areas) are necessary for the survival of this taxon.

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 available information pertaining to the habitat requirements of the species. 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 relied on information in articles in peer-reviewed journals, the Coachella Valley MSHCP/NCCP, survey reports and other unpublished materials, and expert opinion or personal knowledge. We also used the model developed by the Coachella Valley Mountains Conservancy to help identify *A. lentiginosus* var. *coachellae* habitat (CVMC 2004). Finally, we used information from the proposed (69 FR 74468; December 14, 2004) and final (70 FR 74112; December 14, 2005) critical habitat rules, the 5-year status review that was signed on September 1, 2009 (Service 2009), and other information in our files. We are proposing to designate revised critical habitat in areas within the geographical area occupied by *A. l.* var. *coachellae* at the time of listing in 1998. We are also proposing to designate specific areas outside the geographical area occupied by the taxon at the time of listing, because such areas support sand transport processes that are vital to maintaining suitable habitat, and therefore are essential for the conservation of the taxon.

Suitable habitat may be occupied by the taxon even if no plants appear above-ground. *Astragalus lentiginosus* var. *coachellae* populations can survive drought periods through dormant seeds (seed bank) and root crowns, and as a consequence, the number of above-ground plants at any given time is only a limited temporal indication of population size (Meinke *et al.* 2007, p. 39). It is not known how long *A. l.* var. *coachellae* seeds may remain viable, but studies on *A. l.* var. *micans* demonstrate that buried seeds may remain viable for at least 8 years (Pavlik and Barbour 1986, p. 31). Therefore, we also considered areas as occupied where suitable habitat did not contain above-ground individuals, but likely contain seed banks and dormant root crowns of *A. l.* var. *coachellae.*

Unoccupied areas that provide for the fluvial transport of sand from fluvial sand source areas to fluvial depositional areas occupied by *Astragalus lentiginosus* var. *coachellae* are also proposed for designation. These areas are essential for the conservation of *A. l.* var. *coachellae* because they maintain *A. l.* var. *coachellae* habitat (see criteria numbers 4, 5, and 6 below).

We defined the boundaries of each unit based on the criteria below:

Occupied Areas

(1) Potential suitable habitat for *Astragalus lentiginosus* var. *coachellae* was first identified using areas included in the Coachella Valley Mountains Conservancy (CVMC) species distribution model for the taxon (CVMC 2004). The CVMC model was developed using survey data for *A. l.* var. *coachellae* (Bureau of Land Management, unpublished data 2001), habitat variables, and expert opinion, and was created to assist in the design of preserves and to evaluate the potential benefits of the (then) proposed Coachella Valley MSHCP/NCCP for the plant (CVMC 2004). Environmental variables associated with *A. l.* var.

coachellae occurrence locations were identified and maps containing those variables were combined with Geographic Information Systems (GIS) land use and habitat data to create the model. Eight types of habitats were used in the model: (1) Margins of active dunes, (2) active shielded desert dunes, (3) stabilized desert dunes, (4) stabilized sand fields, (5) stabilized shielded sand fields, (6) ephemeral sand fields, (7) active sand fields, and (8) mesquite hummocks. The habitat types used to create the model represented conditions that result from the dynamic process of sand movement in the Coachella Valley floor; these habitat types are found in fluvial sand depositional areas and aeolian sand source, transport, and depositional areas (see *Habitat* section above for a detailed discussion of these habitat types). During our analysis for the 2005 critical habitat designation for *A. l.* var. *coachellae,* we reviewed the validity of the environmental variables used to create the model with occurrence data and information about the plant's ecology. We found documentation of *A. l.* var. *coachellae* occurrences in all of the natural communities used to create the model, and concluded that the model was reasonably capable of identifying suitable habitat for *A. l.* var. *coachellae.* We mapped the modeled habitat using GIS software, and refined the map to only include areas that we believe either contain the physical or biological features essential to the conservation of the taxon or are otherwise essential for the conservation of the taxon.

(2) We analyzed lands covered by the Coachella Valley MSHCP/NCCP, and determined that *A. l.* var. *coachellae* habitat within the Coachella Valley MSHCP/NCCP Conservation Areas sufficiently provides for the conservation of the taxon within areas covered by the Coachella Valley MSHCP/NCCP (Conservation Areas are a group of specific areas in which the bulk of the habitat conservation mandated by the HCP is to take place). We have determined that the modeled *A. l.* var. *coachellae* habitat outside of the Conservation Areas does not contain the physical or biological features considered essential to the conservation of the taxon, nor are these areas otherwise essential for the conservation of the taxon because these areas exist as small, disjunct patches, other larger areas where sand transport has been blocked, or they do not contain documented occurrences of the taxon.

The modeled *Astragalus lentiginosus* var. *coachellae* habitat areas that are covered by the Coachella Valley MSHCP/NCCP and are within the Conservation Areas are connected to the fluvial portion of the sand transport system. Each element of the PCE can be found in these areas (fluvial sand transport within Conservation Areas is discussed below). Modeled *A. l.* var. *coachellae* habitat areas that are covered by the Coachella Valley MSHCP/NCCP but are outside of the Conservation Areas may contain some elements of the PCE, but for reasons discussed above we do not consider these areas to meet the definition of critical habitat for *A. l.* var. *coachellae.* Therefore, in areas covered by the Coachella Valley MSHCP/NCCP, we have confined the proposed critical habitat to lands that are within the Conservation Areas.

(3) We added areas that are not covered under the Coachella Valley MSHCP/NCCP, but have been determined by biologists familiar with the taxon, its habitat, and its distribution, to contain the physical or biological features essential to the conservation of the taxon (see Summary of Changes From Previously Designated Critical Habitat section below for further discussion regarding these areas). The biologists used aerial map coverages, Service GIS data, and personal knowledge to determine these areas.

Unoccupied Areas

We determined that designating only those areas occupied at the time of listing (also identified as the occupied depositional areas and intervening areas needed for aeolian sand transport, seed dispersal, and pollinator movement) would not sufficiently provide for the conservation of *Astragalus lentiginosus* var. *coachellae,* because fluvial transport of sand from hills (fluvial sand source areas) into occupied areas is vital to the maintenance of habitat for the taxon. It will be impossible to conserve or recover this taxon if fluvial sand transport processes are lost; therefore, we determined that fluvial sand transport areas should be proposed for inclusion in the critical habitat designation for *A. l.* var. *coachellae* regardless of the fact that these areas are outside the geographical area occupied by *A. l.* var. *coachellae* at the time the species was listed. We used the following steps to determine which portions of the fluvial sand transport system are essential for the conservation of *A. l.* var. *coachellae:*

(4) Based on studies of the geomorphological processes of sediment movement in the Coachella Valley by Lancaster *et al.* (1993) and Griffiths *et al.* (2002), we identified and mapped drainage basins that provide sediment for the four major sand transport systems in the Coachella Valley (San Gorgonio/Snow Creek, Whitewater River, Mission Creek/Morongo Wash, and Thousand Palms). Based on Griffiths *et al.* (2002, p. 10), the drainages in eastern San Bernardino, western Little San Bernardino Mountains, northern San Jacinto Mountains, and Indio Hills that contribute sediment to the Coachella Valley include the: San Gorgonio River; Whitewater River; Snow Canyon; San Jacinto 1 and 2; Stubbes Canyon; Cottonwood Canyon; Garnet Wash; Mission Creek; Dry Morongo; lower Little Morongo Creek; lower Big Morongo south of Morongo Valley; and drainages in the southern flank of Indio Hills west of Thousand Palms Canyon. We used GIS data obtained from Peter Griffiths (United States Geological Survey 2002) to determine drainage boundaries. We used these drainage boundaries to ensure we did not include portions of stream channels that did not contribute sediment to occupied areas.

(5) We then used aerial imagery to determine where the main stream channels conveying sand to the fluvial depositional areas (San Gorgonio River, Whitewater River, Snow Creek, Mission Creek, and Morongo Wash) are located, and used our GIS software to draw polygons that define the extent of these streams. Griffiths *et al.* (2002) found that very little of the sand reaching the valley floor areas originates from portions of the mountain drainages where the ground slope is less than 10 percent. We considered only the lower reaches of main stream channels (fluvial sand transport areas) that receive sediment from source areas in the surrounding mountains and hills and convey that sediment to the fluvial depositional areas on the valley floor essential for the conservation of the taxon. These channels have upstream portions and numerous tributaries within areas with 10 percent slope or greater (sand source areas); therefore, we believe there is enough redundancy among these tributaries and the areas that they drain that only the lower reaches of main stream channels (where ground slope is less than 10 percent) are essential for the conservation of the taxon. If the lower reaches of any of the main stream channels are lost, sand transport to portions of the occupied *A. l.* var. *coachellae* habitat downstream and downwind will be lost as well. Using GIS data, we determined where the ground slopes of the main stream channels become greater than 10 percent. We believe that where the main streams exceed 10 percent slope, they too become redundant with the numerous tributaries and washes

feeding into them. Therefore, we have only identified those fluvial sand transport areas as essential for the conservation of the taxon where portions of the main stream channels have a slope of less than 10 percent.

(6) The occupied areas in the Thousand Palms area (proposed Unit 4) depend on large flooding events to wash sands stored in channels on alluvial fans to the north at the base of the Indio Hills (fluvial sand source areas) southward into fluvial depositional areas where the sand can be moved by aeolian processes. Therefore, in the Thousand Palms area, we used aerial imagery to determine the extent of the alluvial fans where the sand is stored, and used our GIS software to create a GIS polygon to encompass this area.

In this proposed revised critical habitat designation for *Astragalus lentiginosus* var. *coachellae,* we selected areas based on the best scientific data available that possess those physical or biological features essential to the conservation of the taxon and that may require special management considerations or protection, and other areas essential for the conservation of the plant. When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other hard structures because such lands lack physical or biological features for *A. l.* var. *coachellae.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed revised rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect adjacent critical habitat.

We are proposing for designation as critical habitat lands that we have determined were occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential to the conservation of the taxon, and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of *Astragalus lentiginosus* var. *coachellae.*

Summary of Changes From Previously Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision to the critical habitat rule for *Astragalus lentiginosus* var. *coachellae* published on December 14, 2005 (70 FR 74112). In cases where we have new information or information that was not available for the previous designation, we are proposing changes to the critical habitat designation for *A. l.* var. *coachellae* to ensure that this rule reflects the best scientific data available. We modified our description of the primary constituent elements and the criteria used to identify critical habitat, which resulted in modification of the boundaries of previously proposed critical habitat units to more accurately reflect areas that include the features that are essential to the conservation of *A. l.* var. *coachellae.* The Secretary will also consider whether to exercise his discretion to exclude specific areas from the final designation under section 4(b)(2) of the Act, including reconsidering areas excluded in the prior designation; we are seeking public comment regarding this matter (see Public Comments section of this rule). Finally, we divided what was previously Unit 1 (Whitewater River System) into two units (Unit 1—San Gorgonio River/Snow Creek System, and Unit 2—Whitewater River System) to more accurately reflect the structure of the sand transport system in the Coachella Valley; these changes are outlined in Table 1 below.

TABLE 1—UNIT NUMBER AND NAME CHANGES FROM THE 2005 CRITICAL HABITAT DESIGNATION TO THIS PROPOSED RULE, AND REASONS FOR NAME CHANGES

Previous unit No.	Previous unit name	New unit No.	New unit name
Unit 1	Whitewater River System	Unit 1	San Gorgonio River/Snow Creek System.
		Unit 2	Whitewater River System.
Unit 2	Mission Creek/Morongo Wash System	Unit 3	Mission Creek/Morongo Wash System.
Unit 3	Thousand Palms System	Unit 4	Thousand Palms System.

Changes in Designation Process

In the 2004 proposed critical habitat rule for *Astragalus lentiginosus* var. *coachellae* (69 FR 74468, December 14, 2004), we determined that 20,559 acres (ac) (8,320 hectares (ha)) were essential to the conservation of the taxon. In that proposed rule, we excluded 16,976 ac (6,870 ha) from the designation. In the 2005 final critical habitat rule (70 FR 74112, December 14, 2005), we identified 17,746 ac (7,182 ha) as containing features essential to the conservation of *A. l.* var. *coachellae*. Of this area, we excluded 14,091 ac (5,703 ha) pursuant to section 4(b)(2) of the Act based on their coverage under the draft Coachella Valley MSHCP/NCCP, and removed 3,655 ac (1,480 ha) of Service Refuge and BLM lands from the designation because we determined that these lands did not meet the definition of critical habitat under section 3(5)(A) of the Act because these lands already received special management considerations due to their inclusion and management within the Coachella Valley Preserve System under the Coachella Valley Fringe-Toed Lizard HCP. The final 2005 critical habitat designation for *A. l.* var. *coachellae* was 0 ac.

In this 2011 revised critical habitat proposal, we determined that 25,704 ac (10,402 ha) meet the definition of critical habitat; this entire area is being proposed as critical habitat for the taxon. The footprint of lands deemed essential in 2005 is very similar to the footprint of the current proposal; however, the 2005 essential lands did not include fluvial sand transport areas or any lands outside of the Coachella Valley MSHCP/NCCP Conservation Areas. This 2011 proposal includes fluvial sand transport areas as well as Tribal areas and areas in the City of Desert Hot Springs that are outside of the Coachella Valley MSHCP/NCCP Conservation Areas.

In the 2011 proposal we made the following specific changes, based on the best available scientific and commercial information:

(1) We refined the primary constituent elements (PCEs) for clarity and to more accurately define the physical or biological features that are essential to the conservation of *A. l.* var. *coachellae*.

(2) We have proposed unoccupied areas we believe are essential for the conservation of *A. l.* var. *coachellae.* These areas consist of lower reaches of main channels (fluvial sand transport areas) that move the sands necessary for *A. l.* var. *coachellae* habitat from fluvial sand source areas in the surrounding hills and mountains to the depositional areas on the floor of the Coachella Valley. These areas were identified as important in the 2004 proposed critical habitat designation (69 FR 74473; December 14, 2004), but were not proposed for inclusion in the critical habitat designation at that time, and were not included in the final designation because they are not occupied, they do not contain suitable habitat, and because the (then draft) Coachella Valley MSHCP/NCCP was proposing to protect sand source areas in a way that was anticipated to benefit the taxon (70 FR 74122; December 14, 2005). After reconsidering the best available information, we now consider these unoccupied areas to be essential for the conservation of the taxon.

(3) We revised the criteria used to identify critical habitat based on the best scientific and commercial data currently available, and re-evaluated all lands within the taxon's range (including tribal lands and lands within the City of Desert Hot Springs, which is not currently a permittee under the Coachella Valley MSHCP/NCCP) in light of this best available information. As a result, some areas are included in this proposed rule that were not identified as containing the physical or biological features essential to the conservation of *A. l.* var. *coachellae* in the 2005 critical habitat designation. As in 2005, we determined that of the lands covered by the Coachella Valley MSHCP/NCCP, only lands within the Conservation Areas contain the physical or biological features essential to the conservation of the taxon. We outline the steps that were used to identify and delineate the areas that we are proposing as critical habitat in this revised proposed critical habitat designation compared to the 2005 critical habitat designation in order to ensure that the public better understands why the areas are being proposed as critical habitat (see the *Criteria Used to Identify Critical Habitat* section).

(4) In the 2004 proposed rule and the 2005 final rule, we excluded or did not include areas under sections 4(b)(2) or 3(5)(A) of the Act, respectively, within the planning boundaries for the (then draft) Coachella Valley MSHCP/NCCP and areas covered under the Coachella Valley Fringe-Toed Lizard HCP (which has since been subsumed by the Coachella Valley MSHCP/NCCP, and effectively no longer exists) (see the discussion above for the specific areas previously excluded or not included). We note that the Service does not now interpret the definition of critical habitat (section 3(5)(A) of the Act) to mean that areas receiving protection or management do not meet the definition of critical habitat. In this proposed rule, we are considering for exclusion under section 4(b)(2) of the Act the areas covered under the Coachella Valley MSHCP/NCCP that we believe meet the definition of critical habitat (see the *Habitat Conservation Plan Lands—Exclusions under Section 4(b)(2) of the Act* section). Exclusions that may occur in the final rule resulting from this proposed rule could differ from the exclusions made in the 2005 critical habitat designation.

Proposed Critical Habitat Designation

We are proposing four units as critical habitat for *Astragalus lentiginosus* var. *coachellae.* The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *A. l.* var. *coachellae.* The four areas we propose as critical habitat are the San Gorgonio/Snow Creek system (Unit 1), the Whitewater River system (Unit 2), the Mission Creek/Morongo Wash fluvial system (Unit 3), and the Thousand Palms system (Unit 4). Each of these units consists of fluvial sand transport areas, which are not occupied by *A. l.* var. *coachellae,* and occupied areas (i.e., fluvial and aeolian depositional areas, as well as aeolian sand source areas and aeolian sand transport areas). The two types of areas are intimately associated in time and space. The approximate area of each proposed critical habitat unit is shown in Table 2.

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Table 2. Proposed critical habitat units for *Astragalus lentiginosus* var. *coachellae*.

[Area estimates reflect all land within critical habitat unit boundaries.]

Note: Area sizes may not sum due to rounding.

Unit	Ownership												Total Area	
	Federal		State Government		Local Government		Private		Tribal		Water District			
	ac	ha	ac	ha	ac	ha	ac	ha	ac	Ha	ac	ha	**ac**	**Ha**
Unit 1: depositional/ occupied	970	393	164	66	69	28	1,301	526	9	4	1	0	**2,515**	**1,018**
Unit 1: unoccupied fluvial sand transport	179	72	0	0	25	10	490	198	307	124	38	15	**1,039**	**420**
Unit 1 Total	1,149	465	164	66	95	38	1,791	725	316	128	39	16	**3,553**	**1,438**
Unit 2: depositional/ occupied	1,544	625	13	5	328	133	869	352	580	235	3,010	1,218	**6,344**	**2,567**
Unit 2: unoccupied fluvial sand transport	397	161	8	3	0	0	417	169	0	0	133	54	**954**	**386**
Unit 2 Total	1,941	786	20	8	328	133	1,286	520	580	235	3,143	1,272	**7,298**	**2,953**
Unit 3: depositional/ occupied	361	146	199	81	1,036	419	3,363	1,361	0	0	123	50	**5,083**	**2,057**
Unit 3: unoccupied fluvial sand transport	140	57	0	0	505	204	1,912	774	0	0	164	67	**2,722**	**1,101**
Unit 3 Total	501	203	199	81	1,541	624	5,275	2,135	0	0	288	117	**7,805**	**3,158**

Unit	Ownership												Total Area	
	Federal		State Government		Local Government		Private		Tribal		Water District			
	ac	ha	ac	ha	ac	ha	ac	ha	ac	Ha	ac	ha	ac	Ha
Unit 4: depositional/ occupied	3,618	1,464	787	319	51	20	333	135	0	0	114	46	**4,902**	**1,984**
Unit 4: unoccupied fluvial sand transport	49	20	911	369	229	92	914	370	0	0	43	17	**2,146**	**868**
Unit 4 Total	3,667	1,484	1,698	687	279	113	1,247	505	0	0	157	63	**7,048**	**2,852**
Subtotal – occupied depositional areas	6,493	2,628	1,163	471	1,484	601	5,865	2,374	589	238	3,248	1,315	**18,843**	**7,626**
Subtotal – unoccupied fluvial sand transport areas	765	309	918	372	759	307	3,734	1,511	307	124	378	153	**6,861**	**2,776**
Total	**7,258**	**2,937**	**2,081**	**842**	**2,243**	**908**	**9,599**	**3,885**	**896**	**363**	**3,627**	**1,468**	**25,704**	**10,402**

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We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *A. l.* var. *coachellae,* below.

Unit 1: San Gorgonio River/Snow Creek System

Unit 1 consists of 1,149 ac (465 ha) of Federal land, 164 ac (66 ha) of State land, 95 ac (38 ha) of local government-owned land, 1,791 ac (725 ha) of private land, 316 ac (128 ha) of tribal land, and 39 ac (16 ha) of water district land in the

Coachella Valley, Riverside County. Within Unit 1, 158 ac (64 ha) are part of the Western Riverside County MSHCP, however, *Astragalus lentiginosus* var. *coachellae* is not a covered species under this plan. Unit 1 contains approximately 1,039 ac (420 ha) of unoccupied fluvial sand transport area associated with the San Gorgonio River and Snow Creek drainages. The remainder of Unit 1 consists of approximately 2,515 ac (1,018 ha) of occupied suitable habitat extending approximately from the eastern edge of the community of Cabazon to just west of Whitewater River, and is approximately bound by State Route 111 to the north, and the foot of the San Jacinto Mountains to the south. In total, Unit 1 consists of 3,553 ac (1,438 ha) of land.

Unoccupied fluvial sand transport areas in this unit contain active washes associated with San Gorgonio River and Snow Creek, which carry substrates created by fluvial erosion of the surrounding hills to occupied fluvial deposition areas in Unit 1 on the valley floor (Griffiths *et al.* 2002, pp. 10–11). Occupied habitat areas of Unit 1 contain the physical or biological features essential to the conservation of *Astragalus lentiginosus* var. *coachellae* including active sand dunes, sand fields, and stabilized and partially stabilized sand fields that provide substrate components and conditions suitable for the growth of *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP 2007, Table 10–1a), and areas over which unobstructed aeolian sand transport can occur.

The occupied areas in Unit 1 meet the definition of critical habitat because they contain the physical or biological features essential to the conservation of the taxon. These features may require special management considerations or protection to address threats from nonnative, invasive plants and unauthorized OHV activity in the occupied areas and threats from alteration of stream flow that impact habitat in the occupied areas. Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to *Astragalus lentiginosus* var. *coachellae* habitat and potential management considerations.

The unoccupied areas in Unit 1 are essential for the conservation of *Astragalus lentiginosus* var. *coachellae* because they contain habitat within the Snow Creek/Windy Point Conservation Area identified by the Coachella Valley MSHCP/NCCP Planning Team as one of four Core Habitat areas for *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP, p. 9–21), and because they contain portions of the San Gorgonio River and Snow Creek that support the fluvial sand transport process crucial to the transport and deposition of sand that provides the foundation of habitat for *A. l.* var. *coachellae* in the occupied areas of Unit 1, and these fluvial sand transport areas support the westernmost occurrences of the taxon. Because of their geographic location, these plants and their habitat receive more rainfall than occurrences and suitable habitat farther east, which allows many individuals to survive more than 1 year, grow larger, and produce more seed, all of which promote the stability and reduce the chance of extirpation of the occurrences in this unit (Meinke *et al.* 2007, p. 33). Also, due to strong winds moving through this area from the west to east, the occupied habitat in Unit 1 likely acts as a source of seed (and hence, a source of genetic diversity) for areas of suitable habitat to the southeast (Meinke *et al.* 2007, p. 40). Unit 1 likely also contributes to the maintenance of genetic diversity in other occupied areas through the movement of pollinators (Meinke *et al.* 2007, p. 37).

Unit 2: Whitewater River System

Unit 2 consists of 1,941 ac (786 ha) of Federal land, 20 ac (8 ha) of State land, 328 ac (133 ha) of local government-owned land, 1,286 ac (520 ha) of private land, 580 ac (235 ha) of tribal land, and 3,143 ac (1,272 ha) of water district land in the Coachella Valley, Riverside County. Unit 2 contains approximately 954 ac (386 ha) of unoccupied fluvial sand transport areas associated with the Whitewater River watershed. The remainder of Unit 2 consists of approximately 6,344 ac (2,567 ha) of occupied suitable habitat and is approximately bound by State Route 111 to the west, the Southern Pacific Railroad to the north and east, and dense urban development in the cities of Palm Springs and Cathedral City to the south. In total, Unit 2 consists of 7,298 ac (2,953 ha) of land.

Unoccupied fluvial sand transport areas in this unit contain active washes associated with Whitewater River, which carry substrates created by fluvial erosion of the surrounding hills (fluvial sand source areas) to occupied fluvial deposition areas in Unit 2 on the valley floor (Griffiths *et al.* 2002, pp. 10–11). Occupied habitat areas of Unit 2 contain the physical or biological features essential to the conservation of *Astragalus lentiginosus* var. *coachellae* including active and ephemeral sand fields, and stabilized and partially stabilized sand fields that provide substrate components and conditions suitable for the growth of *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP 2007, Table 10–1a), and areas over which unobstructed aeolian sand transport can occur.

The occupied areas in Unit 2 meet the definition of critical habitat because they contain the physical or biological features essential to the conservation of the taxon. The features in Unit 2 may require special management considerations or protection to address threats from nonnative plants, urban development, alteration of stream flow, unauthorized OHV activity in the occupied depositional areas, and threats from alteration of stream flow that impact habitat in occupied areas. Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to *Astragalus lentiginosus* var. *coachellae* habitat and potential management considerations.

The unoccupied areas in Unit 2 are essential for the conservation of *Astragalus lentiginosus* var. *coachellae* because they contain Core Habitat within the Whitewater Floodplain Habitat Area, identified by the Coachella Valley MSHCP/NCCP Planning Team as one of four Core Habitat areas for *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP, p. 9–21); because they contain portions of the Whitewater River that support the fluvial sand transport process crucial to transport and deposit sand that provides the foundation of habitat for *A. l.* var. *coachellae* in the occupied depositional areas of Unit 2; and because they serve as a corridor between the habitat and occurrences to the west in Unit 1 and the habitat and occurrences to the east in Unit 3. Although Unit 2 does not serve as a substantial source of aeolian sand to Unit 3 relative to the onsite fluvial sand transport areas in Unit 3 (Mission Creek and Morongo Wash), it may serve as a corridor for gene flow by means of pollen and seed dispersal between Units 1, 2, and 3 due to dispersal of seeds from Unit 1 into Unit 2 and from Unit 2 into Unit 3 combined with movement of pollinators among the three units (Meinke *et al.* 2007, p. 37).

Unit 3: Mission Creek/Morongo Wash System

Unit 3 consists of 501 ac (203 ha) of Federal land, 199 ac (81 ha) of State land, 1,541 ac (624 ha) of local government-owned land, 5,275 ac (2,135 ha) of private land, and 288 ac (117 ha) of water district land in the Coachella Valley, Riverside County. Unit 3 contains approximately 2,722 ac (1,101 ha) of mostly unoccupied fluvial sand

transport area associated with the Mission Creek watershed and a portion of the Morongo Wash watershed (sand deposits on the floodplain terraces of Morongo Wash south of Pierson Boulevard support occurrences of *Astragalus lentiginosus* var. *coachellae*). The remainder of Unit 3 consists of approximately 5,083 ac (2,057 ha) of occupied habitat and includes sand deposits on the floodplain terraces of Morongo Wash south of Pierson Boulevard, and fluvial depositional areas and aeolian transport and depositional areas approximately bound (clockwise from the western boundary) by Little Morongo Road, 18th Avenue, Palm Drive, 20th Avenue, Artesia Road, and Mihalyo Road, in or near the City of Desert Hot Springs. In total, Unit 3 consists of 7,805 ac (3,158 ha) of land.

Unoccupied fluvial sand transport areas in this unit contain active washes associated with Mission Creek and Morongo Wash (north of Pierson Boulevard), which carry substrates created by fluvial erosion of the surrounding hills (fluvial sand source areas) to occupied fluvial deposition areas in Unit 3 on the valley floor (Griffiths *et al.* 2002, pp. 10–11). Occupied habitat areas of Unit 3 contain the physical or biological features essential to the conservation of *Astragalus lentiginosus* var. *coachellae* including stabilized and partially stabilized sand dunes, active and ephemeral sand fields, stabilized and partially stabilized sand fields, and mesquite hummocks that provide substrate components and conditions suitable for the growth of *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP 2007, Table 10–1a). The fluvial sand deposits on the floodplain terraces in certain areas of Morongo Wash also provide substrate components and conditions suitable for growth of *A. l.* var. *coachellae* and support occurrences of the taxon. Unit 3 also contains areas over which unobstructed aeolian sand transport can occur.

The occupied areas in Unit 3 meet the definition of critical habitat because they contain the physical or biological features essential to the conservation of the taxon. The features in Unit 3 may require special management considerations or protection to address threats from nonnative plants, urban development, alteration of stream flow, OHV use in the occupied depositional floodplain terrace areas, and threats from alteration of stream flow that impact habitat in occupied areas. Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to *Astragalus lentiginosus* var. *coachellae* habitat and potential management considerations.

The unoccupied areas in Unit 3 are essential for the conservation of *Astragalus lentiginosus* var. *coachellae* because they contain habitat within the Willow Hole Conservation Area identified by the Coachella Valley MSHCP/NCCP Planning Team as one of four Core Habitat areas for *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP, pp. 9–21—9–22), because they contain portions of Mission Creek and Morongo Wash that support the fluvial sand transport process crucial to transport and deposit sand that provides the foundation of habitat for *A. l.* var. *coachellae* in the occupied depositional areas of Unit 3, and because they support the northernmost extent of the taxon's range and large occurrences containing high densities of the taxon. Each of these factors contributes to the overall genetic diversity of *A. l.* var. *coachellae* (Meinke *et al.* 2007, p. 35) and the maintenance of genetic diversity via the movement of seeds and pollinators (Meinke *et al.* 2007, p. 37). The large numbers of individuals also likely contribute numerous seeds to the soil seed bank. Unit 3 also contains the only area where *A. l.* var. *coachellae* is known to occur in large numbers on floodplain terraces of an active wash (Morongo Wash).

Unit 4: Thousand Palms System

Unit 4 consists of 3,667 ac (1,484 ha) of Federal land, 1,698 ac (687 ha) of State land, 279 ac (113 ha) of local government-owned land, 1,247 ac (505 ha) of private land, and 157 ac (63 ha) of water district land in the Coachella Valley, Riverside County. Unit 4 contains approximately 2,146 ac (868 ha) of unoccupied fluvial sand source and alluvial sand deposition areas associated with drainages originating in the Indio Hills. The remainder of Unit 4 consists of approximately 4,902 ac (1,984 ha) of occupied habitat area in the Thousand Palms Preserve along Ramon Road. In total, Unit 4 consists of 7,048 ac (2,852 ha) of land.

Unoccupied fluvial sand source and alluvial sand deposition areas in this unit contain active ephemeral washes that carry substrates from alluvial deposition areas (sand source areas) in Unit 4 to alluvial fan areas where they can be transported to occupied habitat areas via wind (Lancaster *et al.* 1993, p. 28). Occupied habitat areas of Unit 4 contain the physical or biological features essential to the conservation of *Astragalus lentiginosus* var. *coachellae* including active dunes, active sand fields, and mesquite hummocks that provide substrate components and conditions suitable for the growth of *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP 2007, Table 10–1a), and areas over which unobstructed aeolian sand transport can occur.

The occupied areas in Unit 4 meet the definition of critical habitat because they contain the physical or biological features essential to the conservation of the taxon. The features in the occupied portion of Unit 4 may require special management considerations or protection to address threats from nonnative plants. According to Meinke *et al.* (2007, p. 18), this area supports infestations of *Brassica tournefortii;* researchers observed thousands of acres of *Astragalus lentiginosus* var. *coachellae* habitat inundated with dense populations of this nonnative species. Existing suburban development may require active management measures (for example, collection of sand from developed areas for redistribution within the wind movement corridor). The expansion of new urban development in sand source areas is also a threat to occupied habitat in this unit that may require special management considerations or protection, as are unauthorized OHV activity and a proposed flood control project that could disrupt or permanently destroy the sand transport system in the Thousand Palms area by diverting drainages that provide sand to occupied areas during large flooding events. Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to *A. l.* var. *coachellae* habitat and potential management considerations.

The unoccupied areas in Unit 4 are essential for the conservation of *Astragalus lentiginosus* var. *coachellae* because they contain the Thousand Palms Habitat Area identified by the Coachella Valley MSHCP/NCCP Planning Team as one of four areas of Core Habitat for *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP, p. 9–22), and because they contain alluvial sand deposits that serve as sand source for occupied areas of Unit 4 and that support the fluvial and aeolian sand transport processes crucial to transport sediment that provides the foundation of habitat for *A. l.* var. *coachellae* in the occupied depositional areas of Unit 4. Unit 4 is also essential because it supports occurrences containing large numbers of the taxon that contribute to the overall genetic diversity of *A. l.* var. *coachellae* (Meinke *et al.* 2007, p. 35), and because it is located in the southeasternmost portion of the taxon's range that is hydrologically independent and physically isolated from the other

units. As such, this unit is important to help buffer excessive losses in other parts of the range.

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

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 or biological features to an extent that appreciably reduces the conservation value of critical habitat for *Astragalus lentiginosus* var. *coachellae.* As discussed above, the role of critical habitat is to support life-history needs of the taxon and provide for the conservation of the taxon.

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 *Astragalus lentiginosus* var. *coachellae.* These activities include, but are not limited to:

(1) Actions that would interrupt the fluvial or aeolian transport of sand to depositional areas occupied by *A. l.* var. *coachellae.*

(2) Actions that would damage or kill plants that trap sand, thereby creating unsuitable habitat (such as hummocks that contain *Prosopis glandulosa* var. *torreyana*) for *A. l.* var. *coachellae.*

(3) Actions such as channelization of waterways, which could decrease the sediment load of those waterways and thus decrease the amount or the deposition location of sand entering the sand transport system.

(4) Actions that contribute to the introduction or proliferation of nonnative plants, such as Saharan mustard, which may compete with *A. l.* var. *coachellae* for resources and interfere with the movement of sand.

(5) Actions such as development and landscaping that convert suitable *A. l.* var. *coachellae* habitat to groundcover that does not support the taxon.

(6) Actions such as OHV use that cause sufficient alteration of substrates supporting *A. l.* var. *coachellae* occurrences to make the habitat unsuitable to support the taxon.

Exemptions

Application of Section 4(a)(3)(B) 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.''

There are no Department of Defense lands within the proposed critical habitat designation and as a result no lands are being exempted under section 4(a)(3) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

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 nexus; 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 *Astragalus lentiginosus* var. *coachellae,* the benefits of critical habitat include public awareness of *A. l.* var. *coachellae* presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for *A. l.* var. *coachellae* due to the protection from adverse modification or destruction of critical habitat.

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 or 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 evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, 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 we receive, we will evaluate whether certain lands in proposed critical habitat Units 1–4 are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

We are currently considering excluding the following areas from the critical habitat designation for *Astragalus lentiginosus* var. *coachellae* under section 4(b)(2) of the Act: tribal lands in Units 1 and 2, lands in all four units that are covered under the Coachella Valley MSHCP/NCCP, and lands in the City of Desert Hot Springs (if the City is added to the Coachella Valley MSHCP/NCCP permit before we finalize the critical habitat designation).

We are considering excluding these areas because we believe that 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 information we will consider in our

analysis of the potential exclusion of these or other lands under section 4(b)(2) of the Act. We are not considering for exclusion any areas within the Western Riverside County MSHCP (all occur within Unit 1) because *Astragalus lentiginosus* var. *coachellae* is not a covered species under the plan.

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.

An analysis of the economic impacts for our previous proposed critical habitat designation was conducted and made available to the public on September 27, 2005 (70 FR 56434). This economic analysis was finalized for the final rule to designate critical habitat for *Astragalus lentiginosus* var. *coachellae* as published in the **Federal Register** on December 14, 2005 (70 FR 74112). The previous economic analysis found potential economic impacts of the designation to include administrative costs associated with engaging in section 7 consultations, and project modification costs associated with management efforts taken to protect the taxon or its habitat. The potential economic impacts were expected to affect the following sectors: Residential and commercial development, flood control, water supply, energy development, public lands management, and transportation. After excluding land from the proposed critical habitat, the economic impact was estimated to be $7.78 million in undiscounted dollars, or $5.8 million and $4.2 million when using a 3 percent or 7 percent discount rate, respectively, over the next 20 years. Based on the 2005 economic analysis, we concluded that the designation of critical habitat for *A. l.* var. *coachellae,* as proposed in 2004, would not result in impacts to small businesses or the energy industry. This analysis is presented in the notice of availability for the economic analysis as published in the **Federal Register** on September 27, 2005 (70 FR 56434).

We will announce the availability of the current draft economic analysis on this revised designation of critical habitat 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 Carlsbad Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final critical habitat 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 determined that there are no lands within the proposed designation of critical habitat that are owned or managed by the DOD, 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 final 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. We also consider any social impacts that might occur because of the designation.

Table 3 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat that we are considering for possible exclusion under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 3—AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT

Unit	Basis for exclusion	Area considered for exclusion		Percent of unit total
		ac	ha	
Unit 1	Coachella Valley MSHCP/NCCP	2,089	845	59
	Tribal Lands (Morongo)	316	128	9
	Unit 1 Total	2,405	973	68
Unit 2	Coachella Valley MSHCP/NCCP	4,777	1,933	65
	Tribal Lands (Agua Caliente)	580	235	8
	Unit 2 Total	5,357	2,168	73
Unit 3	Coachella Valley MSHCP/NCCP	5,515	2,232	71
	City of Desert Hot Springs	1,788	724	23
	Unit 3 Total	7,303	2,956	94
Unit 4	Coachella Valley MSHCP/NCCP	3,381	1,368	48
Total		18,446	7,465	72

Tribal Lands—Exclusions Under Section 4(b)(2) of the Act

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to endangered and threatened species. Conversely, such designation is often viewed by tribes as unwarranted and an unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of endangered and threatened species populations depend. We will take into consideration our partnerships and existing conservation actions that tribes have or are currently implementing when conducting our exclusion analysis in the final revised critical habitat designation. If the Secretary decides to exercise his discretion under section 4(b)(2) of the Act, we are considering lands covered by the tribes identified below for possible exclusion from final critical habitat.

We are considering the exclusion of 316 ac (128 ha) of *Astragalus lentiginosus* var. *coachellae* habitat proposed in Unit 1 under section 4(b)(2) of the Act on tribal lands that are owned or managed by the Morongo Band of Mission Indians (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation), and 580 ac (235 ha) of *A. l.* var. *coachellae* habitat proposed in Unit 2 that are owned or managed by the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation (Agua Caliente Band of Cahuilla Indians) on the basis of our partnership with these tribes and their ongoing conservation and wildlife management efforts. The Morongo Band of Mission Indians has not completed a management plan that specifically provides for conservation of *A. l.* var. *coachellae* on their lands. The Agua Caliente Band of Cahuilla Indians has been working with our office on developing a draft HCP that includes conservation measures for *A. l.* var. *coachellae*. Although the Agua Caliente Band of Cahuilla Indians notified us in a letter dated October 6, 2010, that they suspended their pursuit of a Section 10(a) permit for their draft HCP (ACBCI 2010a, p. 1), they are continuing to implement the draft HCP and will continue to protect and manage natural resources within their jurisdiction (ACBCI 2010b, p. ES–1). We are seeking public comment regarding whether the conservation needs of *A. l.* var. *coachellae* can be achieved by limiting the designation to non-tribal lands and the appropriateness of the inclusion or exclusion of these lands from the final revised critical habitat designation (see Public Comments section).

Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act

When evaluating a current land management or conservation plan (HCPs as well as other types) and the habitat management or protection it provides, we consider the following factors:

(1) Whether 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) Whether 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) Whether the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

Habitat conservation plans often cover a wide range of species, including listed plant species and species that are not State or federally listed and would otherwise receive little protection from development. Many HCPs take years to develop, and upon completion, are consistent with recovery objectives for listed species that are covered within the plan area. Many HCPs also provide conservation benefits to listed and unlisted sensitive species through conservation measures and management and preservation of land in perpetuity.

The benefits of excluding lands with approved HCPs that cover listed plant species from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. A related benefit of excluding lands covered by approved HCPs from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. By excluding lands with approved HCPs, we preserve the integrity of our current partnerships and encourage additional conservation actions in the future.

Astragalus lentiginosus var. *coachellae* is a covered species under the Coachella Valley MSHCP/NCCP. The Secretary is considering exercising his discretion to exclude lands covered by this plan (including lands in the City of Desert Hot Springs, which are not covered presently by the HCP, but which we expect to be added to the HCP in the near future; continued consideration for exclusion from this designation is contingent upon Desert Hot Springs becoming a permittee under the HCP). In this proposed rule, we are seeking input from the stakeholders in this HCP and from the public on lands that the Secretary should consider for exclusion from the final designation of critical habitat. Below is a brief description of the lands proposed as critical habitat covered by the Coachella Valley MSHCP/NCCP.

Coachella Valley Multiple Species Habitat Conservation Plan (Coachella Valley MSHCP)

The Coachella Valley MSHCP/NCCP is a large-scale, multi-jurisdictional habitat conservation plan encompassing about 1.1 million ac (445,156 ha) in the Coachella Valley of central Riverside County. The Coachella Valley MSHCP/NCCP is also a ''Subregional Plan'' under the State of California's Natural Community Conservation Planning (NCCP) Act, as amended. An additional 69,000 ac (27,923 ha) of tribal reservation lands distributed within the plan area boundary are not included in the Coachella Valley MSHCP/NCCP. The Coachella Valley MSHCP/NCCP addresses 27 listed and unlisted ''covered species,'' including *Astragalus lentiginosus* var. *coachellae.* On October 1, 2008, the Service issued a single incidental take permit (TE–104604–0) under section 10(a)(1)(B) of the Act to 19 permittees under the Coachella Valley MSHCP/NCCP for a period of 75 years. Participants in the Coachella Valley MSHCP/NCCP include eight cities (Cathedral City, Coachella, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage); the County of Riverside, including the

Riverside County Flood Control and Water Conservation District, Riverside County Parks and Open Space District, and Riverside County Waste Management District; the Coachella Valley Association of Governments; Coachella Valley Water District; Imperial Irrigation District; California Department of Transportation; California State Parks; Coachella Valley Mountains Conservancy; and the Coachella Valley Conservation Commission (the created joint powers regional authority). The Coachella Valley MSHCP/NCCP was designed to establish a multiple-species habitat conservation program that minimizes and mitigates the expected loss of habitat and incidental take of covered species, including *A. l.* var. *coachellae* (USFWS 2008, pp. 1–207, and Appendix A, pp. 10–50).

The permit covers incidental take resulting from habitat loss and disturbance associated with urban development and other proposed covered activities. These activities include public and private development within the plan area that requires discretionary and ministerial actions by permittees subject to consistency with the Coachella Valley MSHCP/NCCP policies. An associated Management and Monitoring Program is also included in the Coachella Valley MSHCP/NCCP and identifies specific management actions for the conservation of *Astragalus lentiginosus* var. *coachellae.*

Approximately 36,398 ac (14,730 ha) of modeled habitat for *Astragalus lentiginosus* var. *coachellae* occurs in the Coachella Valley MSHCP/NCCP Plan Area (Coachella Valley MSHCP/NCCP 2007, pp. 9–25). Under the Coachella Valley MSHCP/NCCP, approximately 15,706 ac (6,356 ha) of modeled *A. l.* var. *coachellae* habitat will be lost to development. To mitigate this loss, the Coachella Valley MSHCP/NCCP will preserve 7,176 ac (2,904 ha) of modeled habitat for the taxon in perpetuity. Another 4,497 ac (1,820 ha) are anticipated to be conserved through complementary and cooperative efforts by Federal and State agencies and non-governmental organizations. Additionally, 7,707 ac (3,118 ha) of *A. l.* var. *coachellae* modeled habitat within the Plan Area were preserved prior to completion of the Coachella Valley MSHCP/NCCP (acres which coincidentally occur on three Coachella Valley fringe-toed lizard (*Uma inornata*) reserves in the Coachella Valley Preserve System). These lands and the 11,650 ac (4,715 ha) of lands yet to be conserved under the Coachella Valley MSHCP/NCCP will total 19,357 ac (7,833 ha) of *A. l.* var. *coachellae* modeled habitat within the Coachella Valley MSHCP/NCCP Reserve System. As habitat areas are acquired under the Coachella Valley MSHCP/NCCP, they are legally protected within the Reserve System and the direct impacts of development are precluded. This protection, as well as implementation of the avoidance, minimization, and mitigation measures and management and monitoring programs identified in the Coachella Valley MSHCP/NCCP, will reduce impacts to this taxon compared to what would have occurred otherwise.

We are considering the exclusion of lands covered by the Coachella Valley MSHCP/NCCP from the critical habitat designation to preserve the integrity of our partnerships with the Coachella Valley MSHCP/NCCP permittees and because of the protections afforded to the taxon and its habitat by the HCP, which may provide protection whether or not a Federal nexus exists and, therefore, may provide greater protection to the taxon and its habitat than critical habitat designation, especially on non-Federal lands (Unit 1: 2,089 ac (845 ha); Unit 2: 4,777 ac (1,933 ha); Unit 3: 7,303 ac (2,956 ha); Unit 4: 3,381 ac (1,368 ha); see Table 3 above). These lands include 1,788 ac (724 ha) of land in the City of Desert Hot Springs, which is not presently a permittee under the Coachella Valley MSHCP/NCCP, but which may be added to the HCP before we finalize this revised critical habitat designation.

Consistent with the terms of the Coachella Valley MSHCP/NCCP Implementing Agreement, the Secretary is considering exercising his discretion to exclude 17,550 ac (7,102 ha) of *Astragalus lentiginosus* var. *coachellae* habitat on permittee-owned or controlled land in Units 1, 2, 3, and 4 that meet the definition of critical habitat for *A. l.* var. *coachellae* within the Coachella Valley MSHCP/NCCP under section 4(b)(2) of the Act. The 1998 final listing rule for *Astragalus lentiginosus* var. *coachellae* attributed the primary threat from present or threatened destruction, modification or curtailment of its habitat or to urban development, development of wind energy parks, and degradation by off-highway vehicle (OHV) use (63 FR 53598; October 6, 1998). The Coachella Valley MSHCP/NCCP helps to address these threats through a regional planning effort, and outlines specific objectives and criteria for the conservation of *A. l.* var. *coachellae.* We intend to exclude critical habitat from areas covered by the Coachella Valley MSHCP/NCCP based on the protections outlined above and per the provisions laid out in the Implementing Agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in Units 1, 2, 3, and 4 for inclusion or exclusion (see Public Comments section above).

Peer Review

In accordance with our joint policy 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 **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive 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). 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 must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended 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 updated and complete 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 availability of the draft economic analysis of the proposed designation 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.

An analysis of the economic impacts for our previous proposed critical habitat designation was conducted and made available to the public on September 27, 2005 (70 FR 56434). This economic analysis was finalized for the final rule to designate critical habitat for *Astragalus lentiginosus* var. *coachellae.* During that previous proposed rulemaking process, we certified that the proposed designation of critical habitat for *A. l.* var. *coachellae* would not have a significant economic impact on a substantial number of small entities and that the proposed rule did not meet the criteria under SBREFA as a major rule. Therefore, an initial regulatory flexibility analysis was not required. In summary, we reasoned that probable future land uses in a subset of the areas proposed for designation were expected to have a Federal nexus or require section 7 consultation (for example, development projects or projects that alter stream flow). We determined that the most likely Federal involvement would be associated with activities involving Federal Highways Administration, Bureau of Indian Affairs, U.S. Army Corps of Engineers, and Bureau of Land Management, and that the critical habitat designation might result in project modifications when proposed Federal activities would destroy or adversely modify critical habitat. We concluded that, while this might occur, it was not expected frequently enough to affect a substantial number of small entities, and even when it did occur, it was not expected to result in a significant economic impact because we expected that most proposed projects, with or without modification, could be implemented in such a way as to avoid adversely modifying critical habitat, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action.

This economic analysis was finalized for the final rule to designate critical habitat for *Astragalus lentiginosus* var. *coachellae* as published in the **Federal Register** on December 14, 2005 (70 FR 74112). The previous economic analysis found potential economic impacts of the designation to include administrative costs associated with engaging in section 7 consultations, and project modification costs associated with management efforts taken to protect the taxon or its habitat. The potential economic impacts were expected to affect the following sectors: residential and commercial development, flood control, water supply, energy development, public lands management, and transportation. After excluding land from the proposed critical habitat, the economic impact was estimated to be $7.78 million in undiscounted dollars, or $5.8 million and $4.2 million when using a 3 percent or 7 percent discount rate, respectively, over the next 20 years. Based on the 2005 economic analysis, we concluded that the designation of critical habitat for *A. l.* var. *coachellae,* as proposed in 2004, would not result in impacts to small businesses or the energy industry. This analysis is presented in the notice of availability for the economic analysis as published in the **Federal Register** on September 27, 2005 (70 FR 56434).

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. We do not expect this action to significantly affect energy supplies, distribution, or use because, based on the economic analysis performed for the previous designation, we do not anticipate that designation of the areas proposed as critical habitat for *Astragalus lentiginosus* var. *coachellae* will impact the energy industry. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of

assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) A condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because this proposed rule would not substantially change the impacts associated with current management guidelines within Coachella Valley MSHCP/NCCP areas. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or 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. Due to current public knowledge of the species protections both within and outside of the proposed areas, we do not anticipate that property values would be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Astragalus lentiginosus* var. *coachellae* may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the taxon are more clearly defined, the elements of the features of the habitat necessary to the conservation of the taxon are specifically identified, and the areas that are otherwise essential for the conservation of the taxon are also 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 to define the critical habitat boundaries and identifies the elements of physical or biological features essential to the conservation of *Astragalus lentiginosus* var. *coachellae* within the proposed areas to assist the public in understanding the habitat needs of the taxon.

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 would 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 (NEPA) (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 (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)).

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 are currently coordinating with affected tribes regarding this proposed critical habitat designation, and have included tribal lands in this revised proposal. We are requesting public comment on the appropriateness of including or excluding these lands in the final rule. We will continue to coordinate with the tribal governments during the designation process.

References Cited

A complete list of references cited in this proposed rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by revising the entry for ''*Astragalus lentiginosus* var. *coachellae*'' 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							
*	* *	*	*		*		*
Astragalus lentiginosus var. *coachellae*.	Coachella Valley milk-vetch.	U.S.A. (CA)	Fabaceae	E	647	17.96(a)	NA
*	* *	*	*		*		*

3. Amend § 17.96(a) by revising the entry for ''*Astragalus lentiginosus* var. *coachellae* (Coachella Valley Milk-Vetch)'' under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Fabaceae: *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch)

(1) Critical habitat units are depicted for Riverside County, California, on the maps below.

(2) Within these areas, the primary constituent element of the physical or biological features essential to the conservation of *A. l.* var. *coachellae* consists of

(i) Sand formations associated with the sand transport system in Coachella Valley, which

(A) Include active sand dunes, stabilized or partially stabilized sand dunes, active or stabilized sand fields (including hummocks forming on leeward sides of shrubs), ephemeral sand fields or dunes, and fluvial sand deposits on floodplain terraces of active washes.

(B) Are found within the fluvial sand depositional areas, and the aeolian sand source, transport, and depositional areas of the sand transport system.

(C) Are comprised of sand originating in fluvial sand source areas (unoccupied by the taxon at the time of listing) in the hills surrounding Coachella Valley, which is moved into the valley by water (fluvial transport) and through the valley by wind (aeolian transport).

(ii) [Reserved].

(3) Critical habitat does not include manmade structures existing (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 using a base of U.S. Geological Survey 7.5′ quadrangle maps. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983 coordinates.

(5) **Note:** Index map of critical habitat units for *Astragalus lentiginosus* var.

coachellae (Coachella Valley milk-vetch) follows:

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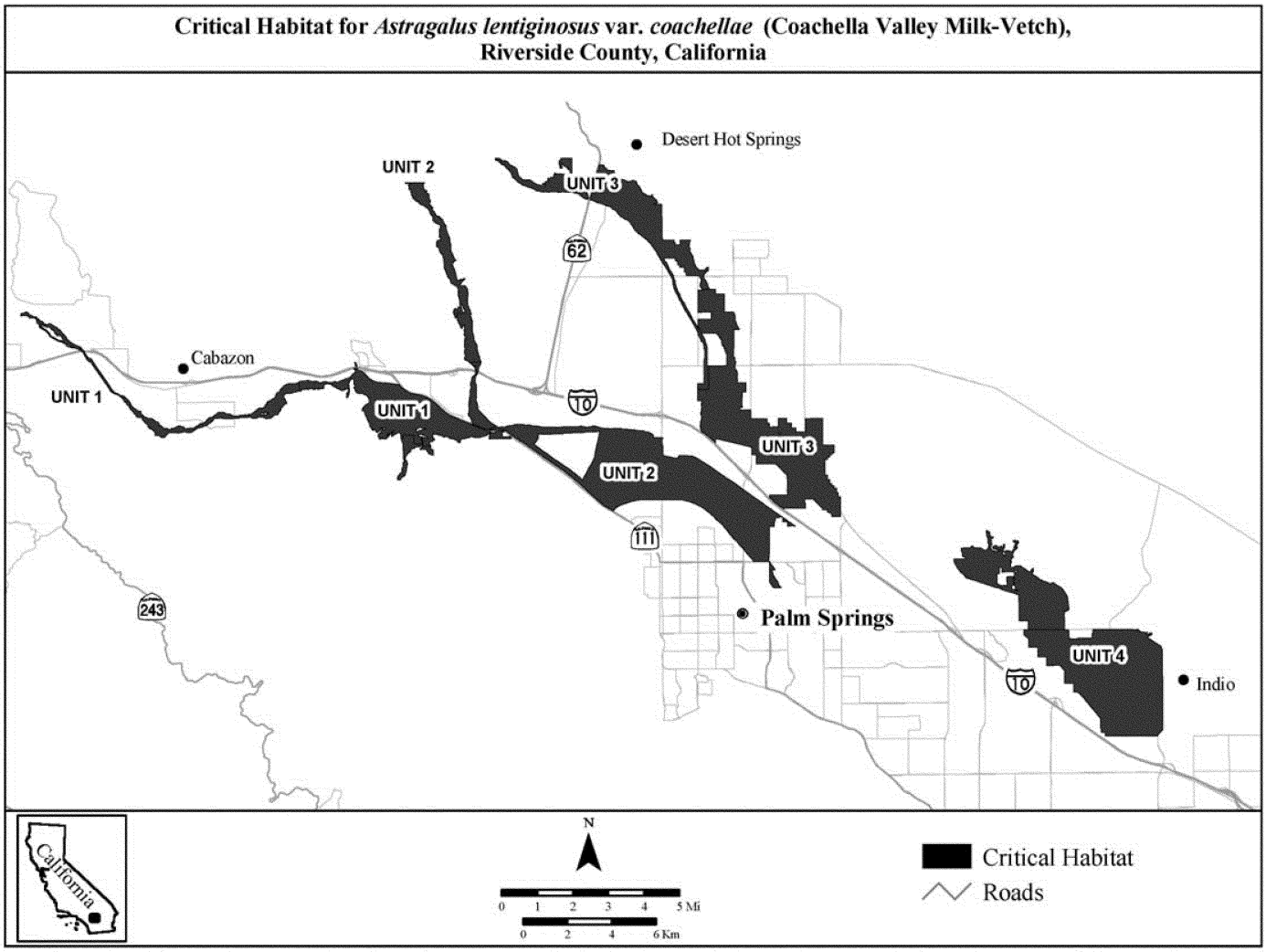
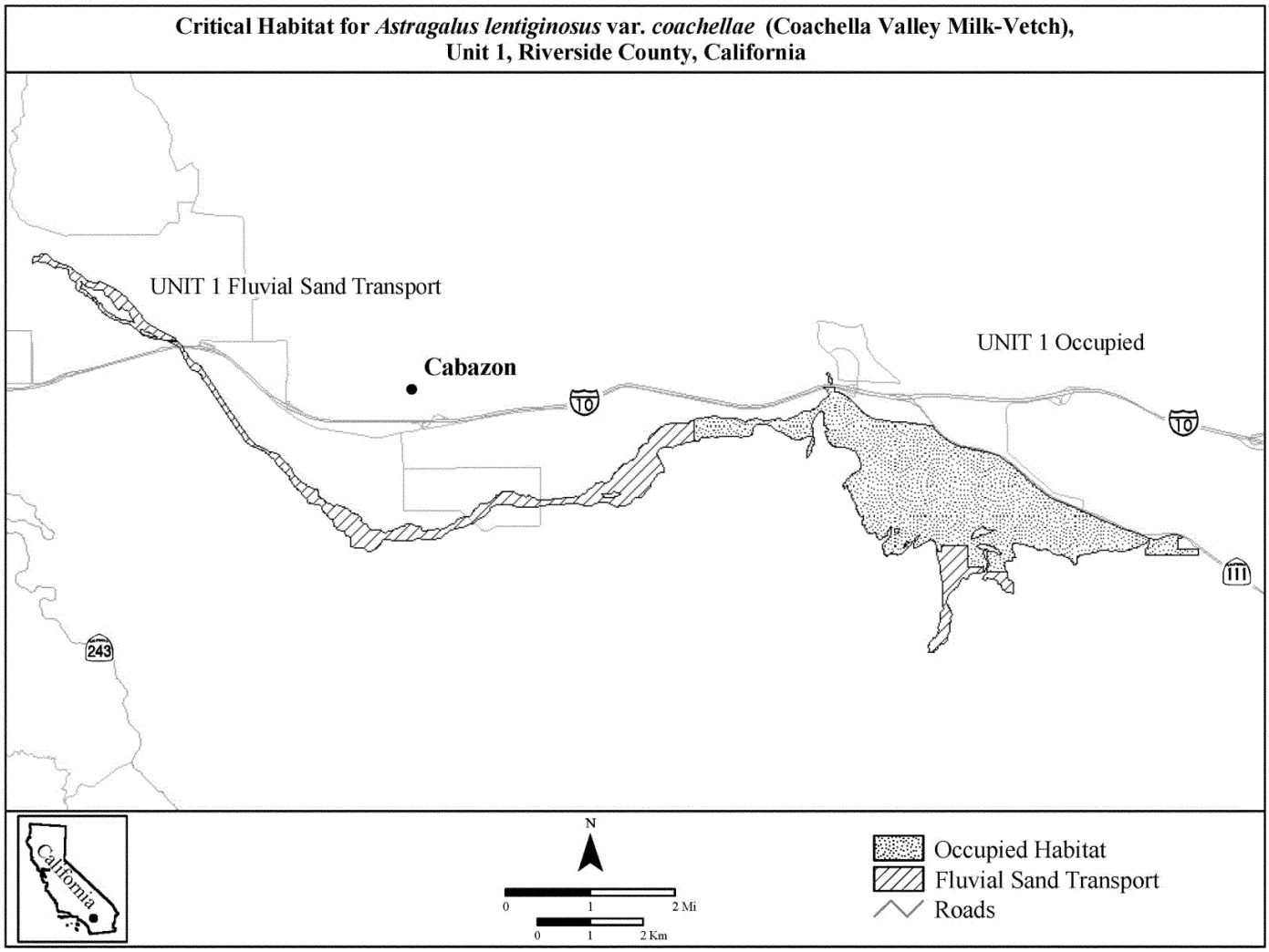


(6) Unit 1: San Gorgonio River/Snow Creek System, Riverside County, California.

(i) [Reserved for textual description of Unit 1: San Gorgonio River/Snow Creek System, Riverside County, California].

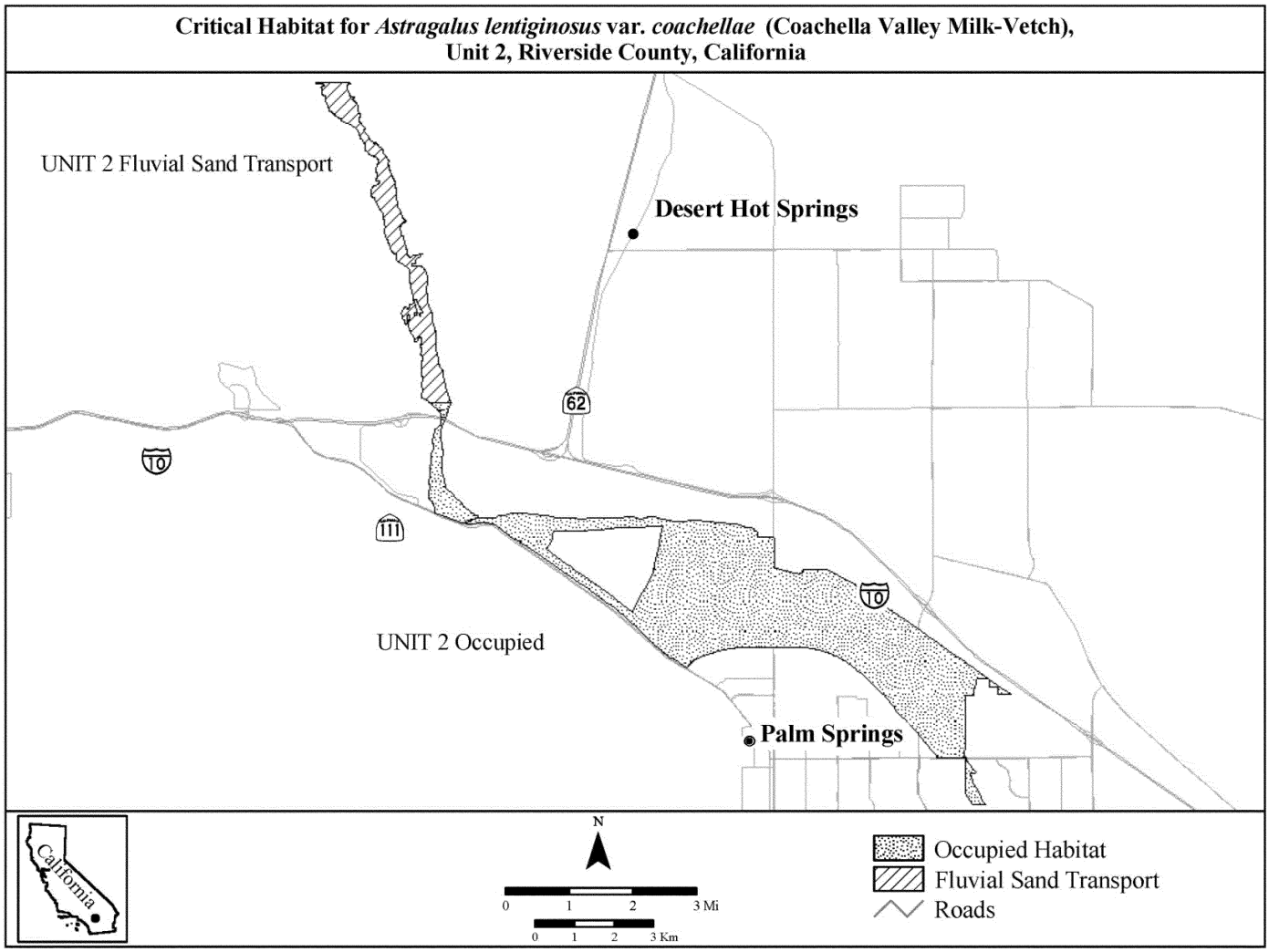
(ii) **Note:** Map of Unit 1: San Gorgonio River/Snow Creek System, Riverside County, California, follows:



(7) Unit 2: Whitewater River System, Riverside County, California.

(i) [Reserved for textual description of Unit 2: Whitewater River System, Riverside County, California]

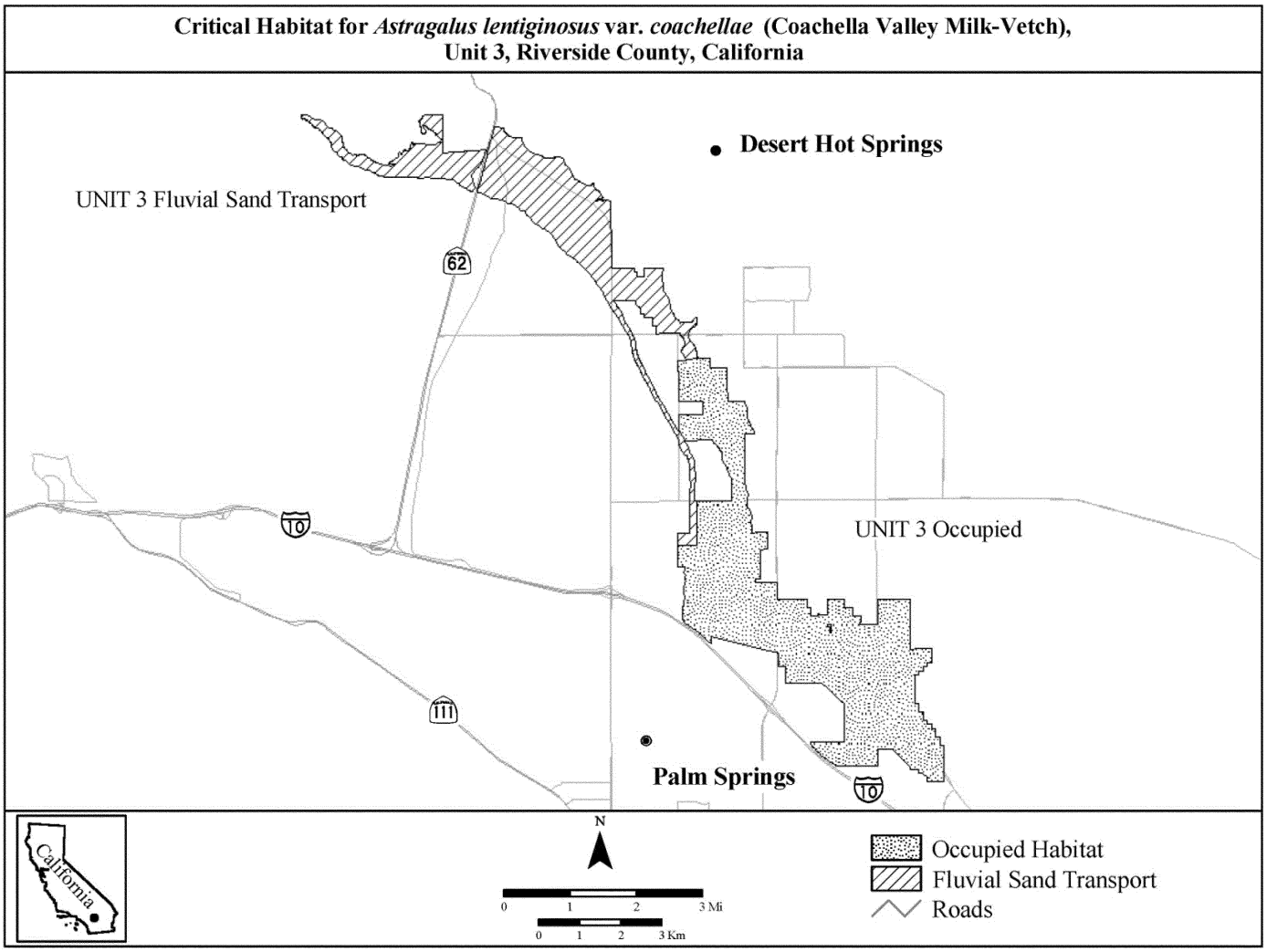
(ii) **Note:** Map of Unit 2: Whitewater River System, Riverside County, California, follows:



(8) Unit 3: Mission Creek/Morongo Wash System, Riverside County, California.

(i) [Reserved for textual description of Unit 3: Mission Creek/Morongo Wash System, Riverside County, California]

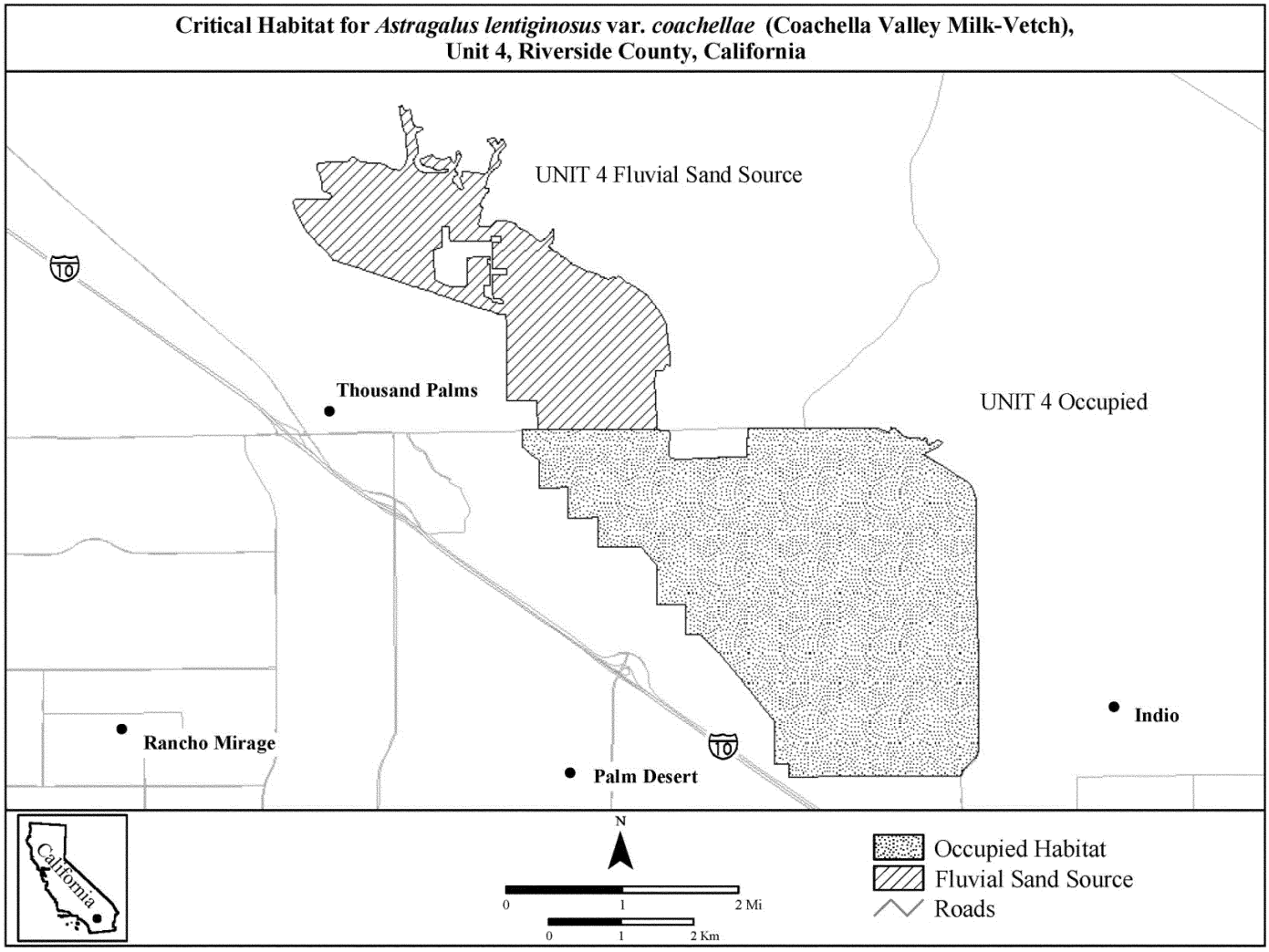
(ii) **Note**: Map of Unit 3: Mission Creek/Morongo Wash System, Riverside County, California, follows:



(9) Unit 4: Thousand Palms System, Riverside County, California.

(i) [Reserved for textual description of Unit 4: Thousand Palms System, Riverside County, California]

(ii) **Note:** Map of Unit 4: Thousand Palms System, Riverside County, California follows:



* * * * *

Dated: August 15, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–21442 Filed 8–24–11; 8:45 am]

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Part IV

Department of Health and Human Services

42 CFR Part 50
45 CFR Part 94
Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding Is Sought and Responsible Prospective Contractors; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 50

45 CFR Part 94

[Docket Number NIH–2010–0001]

RIN 0925–AA53

Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought and Responsible Prospective Contractors

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule implements changes to the regulations on the Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought and Responsible Prospective Contractors. Since the promulgation of the regulations in 1995, biomedical and behavioral research and the resulting interactions among government, research Institutions, and the private sector have become increasingly complex. This complexity, as well as a need to strengthen accountability, led to changes that expand and add transparency to Investigators' disclosure of Significant Financial Interests (SFIs), enhance regulatory compliance and effective institutional oversight and management of Investigators' financial conflicts of interests, as well as increase the Department of Health and Human Services' (HHS) compliance oversight.

DATES: *Effective Date:* This final rule is effective as of September 26, 2011.

Compliance Date: An Institution applying for or receiving PHS funding from a grant, cooperative agreement, or contract that is covered by this rule must be in full compliance with all of the regulatory requirements herein:

- No later than August 24, 2012; and
- Immediately upon making its institutional Financial Conflict of Interest (FCOI) policy publicly accessible as described herein.

In the interim, Institutions should continue to comply with the 1995 regulations and report Investigator FCOIs to the Public Health Service (PHS) Awarding Component as required in the 1995 regulations.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852–7669, telephone 301–496–4607, fax 301–402–0169, e-mail *jm40z@nih.gov*, concerning questions about the rulemaking process; and Dr. Sally Rockey, NIH Deputy Director for Extramural Research, concerning substantive questions about the rule, e-mail *FCOICompliance@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, the PHS and the Office of the Secretary of HHS published regulations at 42 CFR part 50, subpart F and 45 CFR part 94 (the 1995 regulations), that are designed to promote objectivity in PHS-funded research. The 1995 regulations cover Institutions that apply for or seek PHS funding for research (except for Small Business Innovation Research (SBIR)/Small Business Technology Transfer Research (STTR) Phase I applications) and, through implementation of the regulations by these Institutions, to each Investigator participating in the research.

Generally, under the 1995 regulations:

- The Institution [1] is responsible for complying with the regulations, including maintaining a written and enforced FCOI policy; managing, reducing, or eliminating identified conflicts; and reporting identified conflicts to the PHS Awarding Component. The reports denote the existence of an FCOI and the Institution's assurance that it has been managed, reduced, or eliminated.
- Investigators [2] are responsible for complying with their Institution's written FCOI policy and for disclosing their SFIs [3] to the Institution.
- Maintaining objectivity in research requires a commitment from Institutions and their Investigators to completely disclose, appropriately review, and robustly manage identified conflicts.
- The PHS Awarding Components [4] are responsible for overseeing institutional compliance with the regulations.

The purpose of the 1995 regulations was to ensure that there is no reasonable expectation that the design, conduct, or reporting of PHS-funded research will be biased by any Investigator FCOI. Since the publication of the 1995 regulations, the pace by which new discoveries are translated from the research bench into effective treatment of patients has accelerated significantly, and the biomedical and behavioral research enterprise in the United States has grown in size and complexity. For example, an analysis of financial support of biomedical research from 1994 to 2004 [5] showed that funding increased from $37.1 billion in 1994 to $94.3 billion in 2003. Fifty seven percent of the funding in 2003 came from industry sources. At the same time, relationships between individual academic researchers and industry have also increased from 28% in a 1996 survey [6] to 52.8% in a survey conducted in 2007.[7] Researchers frequently work in multidisciplinary teams to develop new strategies and approaches for translating basic research into clinical application, thus hastening discovery and advancing human health. In addition, these newer translational strategies often involve complex collaborations between Investigators and the private sector.

Recent studies from several sources have also highlighted the increasing complexity of the financial relationships

[1] ''Institution'' was defined under 42 CFR part 50, subpart F, as any domestic or foreign, public or private, entity or organization (excluding a Federal agency), and under 45 CFR part 94 as any public or private entity or organization (excluding a Federal agency) (1) that submits a proposal for a research contract whether in response to a solicitation from the PHS or otherwise, or (2) that assumes the legal obligation to carry out the research required under the contract. 42 CFR 50.603; 45 CFR 94.3.

[2] ''Investigator'' was defined under the 1995 regulations as the Principal Investigator and any other person who is responsible for the design, conduct, or reporting of research (or, in the case of PHS contracts, a research project) funded by PHS, or proposed for such funding. For purposes of the regulatory requirements relating to financial interests, the term ''Investigator'' includes the Investigator's spouse and dependent children. 42 CFR 50.603; 45 CFR 94.3.

[3] ''Significant Financial Interest'' was defined under the 1995 regulations as anything of monetary value, including but not limited to, salary or other payments for services (*e.g.*, consulting fees or honoraria); equity interests (*e.g.*, stocks, stock options or other ownership interests); and intellectual property rights (*e.g.*, patents, copyrights and royalties from such rights). The term does not include: (1) Salary, royalties, or other remuneration from the applicant Institution; (2) any ownership interests in the Institution, if the Institution is an applicant under the SBIR/STTR programs; (3) income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities; (4) income from service on advisory committees or review panels for public or nonprofit entities; (5) an equity interest that when aggregated for the Investigator and the Investigator's spouse and dependent children meets both of the following tests: does not exceed $10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a five percent ownership interest in any single entity; or (6) salary, royalties, or other payments that when aggregated for the Investigator and the Investigator's spouse and dependent children over the next twelve months, are not expected (or, in the case of PHS contracts, are not reasonably expected) to exceed $10,000. 42 CFR 50.603; 45 CFR 94.3.

[4] ''PHS Awarding Component'' was defined as an organizational unit of the PHS that funds research that is subject to these regulations. 42 CFR 50.603, 45 CFR 94.3.

[5] Moses H *et al.*, JAMA; 2005;294:1333–1342.

[6] Blumenthal D *et al.*, N Engl J Med; 1996; 335:1734–9.

[7] Zinner DE *et al.*, Health Aff; 2009;28:1814–25.

between biomedical researchers and industry and the possible ramifications of those relationships. For example, a 2008 report by the Association of American Medical Colleges and the Association of American Universities (AAMC/AAU) [8] states: ''The promises of translational research, the challenges of technology transfer, and intense expectations at all levels of government that universities and their academic medical centers function as engines of socio-economic development generate new pressures on institutions and their faculty members to expand their relationships and deepen their engagement with industry. These relationships, now encouraged in many forms, may involve financial linkages that are entirely benign but will in other cases carry the potential to create serious conflicts of interest. Moreover, these financial ties are occurring in a context of dramatically increased public sensitivity to and concern with allegations of financial conflicts of interest more broadly in university business transactions and across diverse sectors of industry.'' A recent study of the Institute of Medicine (IOM) on Conflict of Interest in Medical Research, Education, and Practice states: ''Physicians and researchers must exercise judgment in complex situations that are fraught with uncertainty. Colleagues, patients, students, and the public need to trust that these judgments are not compromised by physicians' or researchers' financial ties to pharmaceutical, medical device, and biotechnology companies. Ties with industry are common in medicine. Some have produced important benefits, particularly through research collaborations that improve individual and public health. At the same time, widespread relationships with industry have created significant risks that individual and institutional financial interests may unduly influence professionals' judgments about the primary interests or goals of medicine. Such conflicts of interest threaten the integrity of scientific investigations, the objectivity of medical education, and the quality of patient care. They may also jeopardize public trust in medicine.'' [9] A 2009 report from the HHS Office of Inspector General (OIG) stated ''Vulnerabilities exist at grantee institutions regarding conflicts.'' [10]

The growing complexity of biomedical and behavioral research; the increased interaction among Government, research Institutions, and the private sector in attaining common public health goals while meeting public expectations for research integrity; as well as increased public scrutiny, all have raised questions as to whether a more rigorous approach to Investigator disclosure, institutional management of financial conflicts, and Federal oversight is required. HHS decided to explore the need for revisions to the 1995 regulations by publishing an Advance Notice of Proposed Rulemaking on May 8, 2009 (74 FR 21610, hereafter ''the ANPRM'').

After analyzing public comments, HHS published a Notice of Proposed Rulemaking (75 FR 28688, hereafter ''the NPRM'') on May 21, 2010, to amend the 1995 regulations by expanding and adding transparency to Investigators' disclosure of SFIs, enhancing regulatory compliance and effective institutional oversight and management of Investigators' financial conflicts of interests, as well as HHS' compliance oversight.

Major changes to the 1995 regulations proposed in the NPRM included:

- Expanding the scope of the regulations to include SBIR/STTR Phase I applications.
- Amending the definition of SFI to include a de minimis threshold of $5,000 for disclosure that generally applies to payments and/or equity interests as well as any equity interest in non-publicly traded entities.
- Excluding income from government agencies or Institutions of higher education for seminars, lectures, teaching, or service on advisory or review panels.
- Expanding Investigator disclosure requirements to include SFIs that are related to an Investigator's institutional responsibilities, with Institutions responsible for determining whether a disclosed SFI relates to the research for which PHS funding is sought and constitutes an FCOI.
- Enhancing the information on an FCOI reported by the Institution to the PHS Awarding Component to include the information required under the 1995 regulations plus the value of the financial interest or a statement that a value cannot be readily determined, the nature of the FCOI, a description of how the FCOI relates to PHS-funded research, and key elements of the Institution's management plan.
- Requiring that before spending funds for PHS-supported research, an Institution shall post on a publicly accessible Web site information on SFIs of senior/key personnel that the Institution determines are related to the PHS-funded research and constitute an FCOI.

In addition to these major proposed changes, the NPRM incorporated minor proposed changes that reflect technical updates from the 1995 regulations (*e.g.*, in the reference to authority for the regulations, 42 U.S.C. 299c–4 replaces 42 U.S.C. 299c–3, and, for the regulations for grants and cooperative agreements, we added section 219, Title II, Division D of Public Law 111–117, the Consolidated Appropriations Act 2010), or that reflect efforts to improve the overall clarity and accuracy of the regulations (*e.g.*, the title of the regulations for grants and cooperative agreements was changed to ''Promoting Objectivity in Research,'' to reinforce the ongoing nature of the obligations under this subpart). The final rule also incorporates such changes.

On July 21, 2010, HHS published a Notice (75 FR 42362, hereafter ''the Extension Notice'') extending the 60 day comment period for the NPRM by another 30 days and seeking comment on whether HHS should clarify its authority to enforce compliance with the regulations by Institutions and Investigators, and whether HHS should clarify how the regulations apply in circumstances in which an Investigator or a PHS-funded research project transfers from one Institution to another.

II. Discussion of General Public Comments

During the 90 day comment period that ended on August 19, 2010, we received 136 unique comments on the NPRM and the Extension Notice. Many respondents were generally supportive of the overall goal of promoting objectivity in biomedical research. A few cited the importance of such objectivity in maintaining the public's and particularly patients' trust in treatments, drugs and devices that result from PHS-funded biomedical research. Responses to comments in this section are of a general nature while comments on specific provisions of the NPRM are addressed in the next section.

Balancing the Benefits of Relationships With Industry and Possible Conflicts of Interest

As stated by several respondents, it is important to emphasize that translating

[8] Protecting Patients, Preserving Integrity, Advancing Health: Accelerating the Implementation of COI Policies in Human Subjects Research, A Report of the AAMC–AAU Advisory Committee on Financial Conflicts of Interest in Human Subjects Research, February 2008 p1.

[9] Lo, B & Field, M.J. (Eds.). (2009) *Conflict of interest in medical research, education, and practice.* Washington, DC: National Academies Press. p2.

[10] HHS OIG report OEI–03–07–00700 ''How Grantees Manage Financial Conflicts of Interest in Research Funded by the National Institutes of Health'', November 2009 p12.

basic research into clinical application is critical for advancing human health, and this process requires fruitful collaborations among government, academia, and industry. Some respondents were concerned that the revisions to the regulations will have a negative effect on these collaborations and on the translation of research into cures. We want to emphasize that the revisions are not designed to prevent or hinder relationships among government, academia, and industry. Rather, the revisions are aimed at facilitating such relationships by increasing transparency and accountability so that the resulting research is considered objective and in the interest of the public.

Some respondents were concerned that there has not been sufficient research to document an adverse impact of FCOI on the integrity of PHS-funded research, which makes it difficult to substantiate the effectiveness of the proposed measures, and in particular, one commenter questioned the citation of a specific article in the NPRM (''the Wazana paper'') in that regard. While we did not cite a paper by that author in the NPRM, we understand the limitations of the research on this topic. The 1995 regulations were aimed at preventing bias in PHS-funded research, and as such, were intended to be proactive rather than reactive to specific evidence of bias. Nonetheless, over the past few years, there have been several specific allegations of bias among PHS-funded researchers reported in the press. This has led to increased public concern, as evidenced by statements and correspondence from members of Congress and the language in the Department of Health and Human Services Appropriations Act, 2010, to amend the 1995 regulations ''for the purpose of strengthening Federal and institutional oversight and identifying enhancements * * *.'' [11] And as mentioned above, the 2009 OIG report: How Grantees Manage Financial Conflicts Of Interest in Research Funded by the National Institutes of Health found that ''Vulnerabilities exist in grantee Institutions' identification, management, and oversight of financial conflicts of interest.'' It is vital that the public have confidence in the objectivity of PHS-funded research. The revised regulations, with their emphasis on increasing transparency and accountability, as well as providing additional information to the PHS Awarding Component, are aimed at doing just that.

Other respondents requested that, given the complexity of the issues related to management of Investigator FCOI, HHS fund research to address issues related to the implementation of these regulations. As part of our oversight activities, NIH has developed and conducted a number of initiatives and site visits to evaluate institutional FCOI policies for compliance with the Federal regulations and has publicized on-line ''Lessons Learned.'' NIH found that the most common compliance issues center around the appropriate definition of ''Investigator'' and Institutional reporting requirements. NIH observed that there was some confusion about receiving disclosures from Investigators who join a project after it has begun, and identifying and reporting FCOI during the project period. Site visits also reaffirmed that education is key in ensuring that Investigators comply with the FCOI requirements by understanding their responsibilities in the process. Therefore, in light of these observations, the definition of ''Investigator'' has been revised in the final rule to emphasize that Institutions should consider the roles of those involved in research and the degree of independence with which those individuals work.

In addition, the final rule includes a new requirement for Institutions to require each Investigator to complete training related to the FCOI and/or other FCOI-related requirements at least every four years or immediately under designated circumstances. Information and other resources developed by NIH, which will be updated as appropriate, are available as resources for the new regulatory training requirement and can be accessed through the NIH Web site's Financial Conflict of Interest page at *http://grants.nih.gov/grants/policy/coi/.*

Several respondents requested that the revised regulations apply only to new or competing PHS awards and newly identified FCOIs. We note that many PHS grants, cooperative agreements, and contracts continue for several years and, particularly in the case of grants and cooperative agreements, a new award can be made every year. Therefore, the revised regulations will apply to each grant or cooperative agreement with an issue date of the Notice of Award that is subsequent to the compliance dates of the final rule (including noncompeting continuations) and to solicitations issued and contracts awarded subsequent to the compliance dates of the final rule that are for research. Through their policies, Institutions may choose to apply the revised regulations to all active PHS awards. For example, Institutions may choose, in their FCOI policy, to implement the regulations on a single date on all PHS-funded awards rather than implementing the regulations sequentially on the specific award date of each individual project.

Beyond Financial Conflicts of Interest

A few respondents suggested that the regulations should also address non-financial conflicts of interest. While we acknowledge that non-financial conflicts of interest can influence the scientific process, we chose to retain the focus of these regulations on FCOIs because we believe this is a discrete area in which there is a heightened need to strengthen management and oversight. In addition, legal authority for the regulations references FCOI specifically, *e.g.* 42 U.S.C. 289b–1.

One respondent suggested that the regulations be revised to restrict recipients of PHS-funded research from entering into agreements that contain a provision restricting the Investigator's ability to speak, publish, or otherwise undertake activities contrary to a company's commercial interest. Although we believe this action would go beyond the scope of these regulations, we note that as stated in the HHS and NIH Grants Policy Statements (*http://www.ihs.gov/nonMedicalPrograms/gogp/documents/HHS%20Grants%20Policy%20Statement.pdf* and *http://grants.nih.gov/grants/policy/nihgps_2010/nihgps_ch8.htm#_Toc271264951,* respectively), we believe that sharing final research data and other research tools produced or developed by Investigators under PHS-funded grants, such as cell lines, certain types of animals (*e.g.,* transgenic mice), and computer programs, is essential for expedited translation of research results into knowledge, products, and procedures to improve human health. We endorse the sharing of final research data and research tools to serve these and other important scientific goals, and we support the timely release and sharing of final research data and research tools from PHS-supported studies for use by other researchers.

General Comments on Contracts

One respondent was concerned that by revising the regulations, it appears that HHS is modifying the Public Health Service Act. We want to clarify that, through this final rule, HHS has revised regulations promulgated under the Public Health Service Act, not modified the Public Health Service Act itself. The same respondent also believed that ''the PHS Acquisition Regulations were abolished and contents (PHSAR 380—care of lab animals, human subjects and Indian self determination) were folded into HHSAR (approx 1998),'' leading the

[11] Sec. 219, Tit. II, Div. D, Pub. L. 111–117

respondent to question whether the regulations set forth in 45 CFR part 94 remain ''in force.'' This concern is unfounded; the regulations at 45 CFR part 94 remain in effect in addition to, and not in conflict with, the HHS Acquisition Regulation (HHSAR) codified at 48 CFR part 301 *et seq.* Additionally, the respondent questioned the authority of NIH/PHS/HHS ''to set HHS acquisition policy.'' As noted in the final rule promulgating the 1995 regulations, published on July 11, 1995 (60 FR 132), the PHS and the Office of the Secretary are acting in accordance with the legislative directive in 42 U.S.C. 289b–1(a). We have also declined this respondent's suggestion to place the revisions to the regulations at 45 CFR part 94 in the HHSAR; the revisions expressly pertain to the regulations at 45 CFR part 94 and not to 48 CFR part 301 *et seq.*

Another respondent suggested that there is a need to develop a specific HHSAR provision and/or standard language in the Request for Proposals (RFP) regarding the requirement of certification by the contractor in the regulations. We disagree; 45 CFR 94.4(k) provides standard language that is appropriate for each contract proposal subject to these regulations.

Another respondent suggested that contractors should be exempt from the regulatory requirements to disclose or report FCOIs, because the respondent believes that contractors are acting as independent vendors and the Institution has no effective means of monitoring their compliance with the policy. We disagree with this comment. All Federal contractors are required to have an effective means of complying with the terms and conditions of their contract, including regulatory obligations designed to promote objectivity in PHS-funded research. The regulation specifically provides for enforcement of these obligations, stating at 94.6(b) that ''* * * the PHS Awarding Component may decide that a particular financial conflict of interest will bias the objectivity of the PHS-funded research to such an extent that further corrective action is needed or that the Institution has not managed the financial conflict of interest in accordance with this part. The PHS Awarding Component may determine that issuance of a Stop Work Order by the Contracting Officer or other enforcement action is necessary until the matter is resolved.''

One respondent stated that the language under 45 CFR part 94 is confusing because it refers to ''applications for research,'' and ''awarding component'' which seem more like grant terms than contract terms; additionally, the respondent noted that the language is inconsistent with HHS regulations which refer to OPDIVs or Agencies. We appreciate the opportunity to clarify that the regulations at 45 CFR part 94 apply to Institutions that solicit or receive PHS research funding by means of a contract for research, as distinguished from the regulations at 42 CFR part 50 subpart F which are applicable to Institutions that apply for or receive PHS research funding by means of a grant or cooperative agreement. The revised regulations under 45 CFR part 94 do not include any references to (grant) applications, but rather to contract proposals. Furthermore, the references to ''awarding component'' in 45 CFR part 94 are appropriate in the context of research contracts, and such references are not inconsistent with references to ''OPDIVs or Agencies'' in the HHSAR. These terms have a similar meaning, though the HHSAR applies to all operating divisions within HHS, whereas 45 CFR part 94 only applies to the Public Health Service of HHS.

Another respondent expressed concern about inconsistency between the requirements under 45 CFR part 94 and the treatment of organizational conflicts of interest (OCIs) by the Federal Acquisition Regulation (FAR), Subpart 9.5. We are not aware of any direct conflict(s) between the two sets of regulations at this time; 45 CFR part 94 focuses on financial conflicts of interest of Investigators, whereas Subpart 9.5 of the FAR focuses on organizational conflicts of interest. In response to a related question by the same respondent, we note that neither 45 CFR part 94 nor Subpart 9.5 of the FAR require coordination with legal counsel on conflict of interest issues. The FAR provides only in Part 9.504(b) that ''Contracting officers should obtain the advice of counsel'' in consideration of OCIs. The use of the word ''should'' suggests that this step is a matter of policy, and not a legal requirement. To address a final concern by the same respondent, we note that the de minimis reporting level of $5,000 does not imply that no conflict under that amount exists; as discussed further below, that amount is used only as a monetary threshold for the definition of reportable SFIs under 45 CFR part 94.

General Comments on Cost and Burden

Several respondents suggested that the analysis of the impact of the proposed revisions in the NPRM underestimated the burden and cost of implementation, particularly regarding the potential number of Investigators, SFI disclosures, and FCOI reports. By publishing both an ANPRM and an NPRM, we have endeavored to involve the community and carefully consider the public's concerns. This final rule incorporates our best efforts to balance the increased burden that results from any regulatory action with the need to respond to demands for greater transparency and accountability from the public and Congress, including a legislative mandate [Pub. L. 111–117, Div. D, Tit. II, sec. 219, 123 Stat. 3034 (2009)]. We will evaluate the effect of provisions of the regulations such as the de minimis and the public accessibility requirement within three years after implementation of the final rule.

Our burden estimates were based on the current pool of PHS-funded Investigators as well as our experience with FCOI reports under the 1995 regulations. We note that the revised definition of Investigator is not significantly different from that in the 1995 regulations; therefore, the number of Investigators should not change substantially. We recognize that the scope of Investigator SFI disclosures, if not the actual numbers, will increase under the revised regulations, and that the number of FCOI reports may increase as well. We made a good faith estimate in the NPRM as to the extent of these increases. Nonetheless, we have taken these comments into consideration as we revised the Regulatory Impact Analysis in section V to accommodate the content of this final rule. Specifically, we have increased the estimated time for Institutions to adapt NIH training materials to incorporate their policies, the time for Investigator disclosures and updates, and the time for reviewing disclosures. We also added an estimated time for completing a retrospective review, and clarified that the time estimated for Institutions to monitor Investigator compliance with a management plan in the NPRM was calculated on a monthly rather than annual basis.

In addition, several respondents objected to the statement in the NPRM that the cost of implementing the amended regulations is an allowable cost eligible for reimbursement as a Facilities and Administrative cost on PHS-supported grants, cooperative agreements, and contracts, citing limitations in these reimbursements. We recognize that in some instances current cost principles may limit an Institution's ability to recover costs under the Facilities and Administrative cost mechanism. However, this does not render those costs ineligible for recovery.

General Comments on Implementation

Several respondents suggested that HHS provide assistance to Institutions for the implementation of new policies and procedures to comply with the revised regulations. HHS recognizes the need to support implementation and is developing implementation guidance, which may include, for example, Frequently Asked Questions and other updates to NIH's Financial Conflicts of Interest Web site, *http://grants.nih.gov/grants/policy/coi/.* General inquires about the FCOI regulations, and requests to consider additional assistance efforts, may be directed to: *FCOICompliance@mail.nih.gov.*

Many respondents requested that the implementation of the revised regulations be staggered and proposed time periods ranging from one to five years. In particular, respondents suggested that the implementation of the public accessibility requirement in 42 CFR 50.605(a)(5) and 45 CFR 94.5(a)(5) should be postponed to October 2013 to coincide with the disclosure provisions under Title VI, Section 6002, of the recently enacted Patient Protection and Affordable Care Act, Public Law 111–148 (hereafter, Affordable Care Act [12]). We agree that it is important to balance the desire to implement the revised regulations as soon as possible with the need to provide sufficient time for Institutions and Investigators to comply. We have done so by providing a compliance date of up to 365 days from publication of this final rule, as described in the Dates section above. We considered a staggered approach but thought this would create added burden for Institutions and Investigators, and confusion for the public.

One respondent suggested that we assemble an advisory board of administrators at Institutions to assist in our deliberations in drafting the final rule. We encouraged all stakeholders including Institutions to submit comments to the ANPRM and to the NPRM; such comments have been instrumental to our deliberations. Additionally, we convened a committee of NIH/HHS staff with expertise in different types of research funded by the PHS to consider the comments to the NPRM and the ANPRM.

A few respondents suggested that we postpone revising the regulations and conduct additional discussion with the research community. Again, we note that by publishing both an ANPRM and an NPRM, and by encouraging public comment through public outreach initiatives, we have involved the community throughout this process, and we have carefully considered the comments that have been raised.

III. Discussion of Public Comments Related to Specific Provisions of the Revised Regulations

Public comments regarding revisions to specific provisions of the 1995 regulations are summarized below, along with a description of HHS' deliberations and any change made to the final rule in response to the comments.

Purpose (42 CFR 50.601; 45 CFR 94.1)

As proposed in the NPRM,[13] we have made minor revisions to this section to improve internal consistency with regard to the use of various terms and phrases throughout the regulations. One respondent questioned the removal of the words ''to ensure'' in the reference to standards that provide a reasonable expectation that the design, conduct, and reporting of research funded under PHS grants or cooperative agreements is free from bias resulting from Investigator FCOI. We have implemented our proposed language, which focuses on the phrase ''reasonable expectation,'' because we believe it sets a more accurate and realistic objective for the regulations; as another respondent noted, it can be perceived as unrealistic from an enforcement perspective to ''ensure'' the elimination of bias. The respondent also suggested replacing the phrase ''design, conduct, or reporting of research'' with ''design, conduct, analysis, management, administration, reporting, and distribution of research'' throughout the rule. We have not made this change, because we believe that ''design, conduct or reporting'' covers the major responsibilities related to the PHS-funded research and that the term ''conduct'' encompasses many of the additional terms suggested by the respondent.

Applicability (42 CFR 50.602, 45 CFR 94.2)

The 1995 regulations were applicable to each Institution that seeks or receives PHS funding for research and, through implementation of the regulations by each Institution, to each Investigator participating in such research.[14] However, the 1995 regulations excluded SBIR/STTR Phase I applications because of the expectation that such applications ''are for limited amounts.'' [15] As we discussed in the NPRM, since 1995 the size of these awards has increased, such that the amounts constitute a significant expenditure of public funds. For example, the median amount of an NIH Phase I award increased from approximately $99,000 in 1995 to approximately $182,000 in 2009. Therefore, we proposed in the NPRM to include SBIR/STTR Phase I applications in the revised regulations.

We only received a small number of comments on this component of the proposal. While a few respondents agreed that including these applications is reasonable, one respondent suggested that including these applicants in the final rule ''could present difficulties for start-up and emerging companies forced to adhere to the rule's extensive requirements for reporting and managing conflicts of interest requirements—the same rules with which large research institutions with substantially more resources will be complying.''

We have taken this comment into account in our reevaluation of the proposed inclusion of the SBIR/STTR Phase I program and we ultimately determined that this change from the 1995 regulations could indeed create an undue burden. In particular, SBIR/STTR companies are small in size (eligible companies must have fewer than 500 employees, but, for example, the average NIH SBIR/STTR company has approximately 20 employees and many have only 1–3 employees), and these companies tend to be limited in resources. Accordingly, we found the argument to be compelling that the investment required to comply with the regulations could create a disproportionate burden on small businesses. Moreover, approximately 56% of Phase I awardees will apply for Phase II funding, at which point they will be covered by the regulations. Therefore, the regulations will still capture the benefits of compliance from a significant number of these companies without imposing an undue burden that could create a disincentive to applicants

[12] The Patient Protection and Affordable Care Act (the Affordable Care Act), Public Law 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act (the Reconciliation Act), Public Law 111–152, was enacted on March 30, 2010. The Affordable Care Act and the Reconciliation Act reorganize, amend, and add to the provisions of part A of title XXVII of the Public Health Service Act.

[13] 75 FR 28689 (May 21, 2010).

[14] Consistent with the 1995 regulations, in those few cases where an individual, rather than an Institution, is an applicant for PHS grants or cooperative agreements for research, PHS Awarding Components will make case-by-case determinations on the steps to be taken to ensure that the design, conduct, and reporting of the research will not be biased by any conflicting financial interest of the individual.

[15] 60 FR 35814 (July 11, 1995).

from the small business community, an important part of the biomedical research enterprise. For these reasons, the final rule retains the exemption of Phase I SBIR/STTR applications from the 1995 regulations.

We have also implemented the NPRM's proposal to add language in this section clarifying that the regulations continue to apply once the PHS-funded research is underway (*i.e.,* after the application process).

Definitions (42 CFR 50.603, 45 CFR 94.3)

In the NPRM we proposed to add several new definitions, revise some of the existing definitions, and remove one definition. Comments and responses regarding the implementation of those proposed changes in the final rule follow:

1. Contractor. We have implemented the NPRM's proposal to revise the definition of ''Contractor,'' to clarify that the term applies to an entity that provides property or services ''under contract'' for the direct benefit or use of the Federal government.

2. Disclosure of significant financial interests. This definition was not included in the 1995 regulations but was proposed in the NPRM to mean an Investigator's disclosure of SFIs to an Institution. We have included this definition in the final rule—along with the definition of ''FCOI report'' below—because of the confusion that can result from the use of the terms ''disclosure'' and (FCOI) ''report.'' We intend for the term ''disclosure'' to capture communication from an Investigator to an Institution regarding SFIs, whereas the term ''report'' captures communication from an Institution to the PHS Awarding Component regarding FCOI. A few respondents requested that we switch this definition with the one stated below (*i.e.,* FCOI report) in order to align the terminology with a recent report by the AAMC/AAU.[16] We have not made that change because we want to minimize public confusion by keeping our terminology consistent with that used in the 1995 regulations, to the extent possible.

3. Financial conflict of interest (FCOI). We proposed this definition in the NPRM to mean an SFI that could directly and significantly affect the design, conduct, or reporting of PHS-funded research. Although this definition was not listed in the Definitions sections of the 1995 regulations, it is consistent with language contained in other provisions of the 1995 regulations.[17] One respondent suggested that the definition be revised to mean an SFI that could directly or indirectly affect the design, conduct, or reporting of PHS-funded research. We have considered this suggestion and believe that including the term ''indirectly'' could create ambiguity and extend the definition beyond the scope of the regulations. The term ''significantly'' in this context means that the financial interest would have a material effect on the research, which we believe appropriately fulfills the intent of the regulations, *i.e.,* to maintain objectivity in PHS-funded research.

Some respondents requested the inclusion of specific examples to illustrate SFIs that could be considered FCOIs. Because conflicts of interest can vary according to the specific context and Institutional policy, we are concerned that providing examples could create public confusion, so we have not made that change to the final rule. Other respondents suggested that Institutions should consider specific criteria, including the stage of the research and its commercial potential, the proximity to possible U.S. Food and Drug Administration (FDA) review, and the magnitude of the potential risk, when determining whether an SFI is an FCOI. Although we disagree that this suggestion should be implemented in the regulations, we note that Institutions may include a variety of criteria in the review of Investigators' SFIs and the determination of whether they constitute an FCOI with the PHS-funded research, including those suggested by respondents.

4. Financial Conflict of Interest (FCOI) report. This definition was not included in the 1995 regulations but was proposed in the NPRM to mean an Institution's report of an FCOI to a PHS Awarding Component. We have included this definition in the final rule for the same reasons we have included the ''disclosure of SFIs'' definition discussed above.

5. Financial interest. We proposed this definition in the NPRM, as a companion to the revision of the ''SFI'' definition, described below, to mean anything of monetary value or potential monetary value. Some respondents agreed with this definition, while others suggested that the phrase ''or potential monetary value'' is too broad and suggested the stated purpose could be achieved by the phrase: ''anything of monetary value, whether or not the value is readily ascertainable.'' We agree and have changed the language in the final rule accordingly. Another respondent asked if anything of ''potential monetary value'' would include patents or patent applications. As discussed below in the definition of SFI, patents and patent applications are included in the definition.

6. Institution. Consistent with our proposal in the NPRM, we have revised the definition of ''Institution'' to refer specifically to an Institution that is applying for, or that receives, PHS research funding. A few respondents questioned whether Federal agencies should be excluded from this definition, as this would exclude Federal researchers such as NIH scientists. One requested that HHS evaluate the revised regulations after a period of time to assess whether Federal researchers (''intramural investigators'') should be included. Federal agencies and their employees are subject to conflicts of interest requirements, including disclosure by employees and review by agencies, pursuant to Federal criminal statutes, the Ethics in Government Act as amended, and supplemental agency regulations. Accordingly, we have retained the exclusion of Federal agencies in this definition.

7. Institutional responsibilities. We proposed this definition in the NPRM to mean an Investigator's professional responsibilities on behalf of the Institution including, but not limited to, activities such as research, research consultation, teaching, professional practice, institutional committee memberships, and service on panels such as Institutional Review Boards or Data and Safety Monitoring Boards. Some respondents requested that this definition be clarified to specify that the Investigator's responsibilities are defined by the Institution. We agree and have modified the definition accordingly to make clear that the Institution defines the Investigator's responsibilities in its policy on financial conflicts of interests. One respondent suggested that the list of examples should be expanded. In light of the change to the regulatory text noted above, and because the definition indicates that the list is not exhaustive, we have not made further changes.

8. Investigator. Consistent with our proposal in the NPRM, we have revised the definition of ''Investigator'' to clarify that it means the Project Director/Principal Investigator (PD/PI) as well as any other person, regardless of title or position, who is responsible for the design, conduct, or reporting of research funded by the PHS, or proposed for

[16] Protecting Patients, Preserving Integrity, Advancing Health: Accelerating the Implementation of COI Policies in Human Subjects Research, A Report of the AAMC–AAU Advisory Committee on Financial Conflicts of Interest in Human Subjects Research, February 2008.

[17] 42 CFR 50.605(a) and 45 CFR 94.5(a).

such funding, which may include, for example, collaborators or consultants.. Several respondents suggested that this definition is overly broad and will result in disclosures from people who are only peripherally associated with the PHS-funded research. We note that the definition is not substantially different from the definition in the 1995 regulations [18] and is consistent with regulatory guidance that NIH has issued (*e.g.,* see ''Investigator-Specific Questions'' section of NIH's ''Frequently Asked Questions'' resource at *http://grants.nih.gov/grants/policy/coifaq.htm).* In response to questions about whether this definition includes unfunded collaborators, we note that the definition refers to the function of the individual on the PHS-funded project; *i.e.,* his/her responsibility for the design, conduct, or reporting of the PHS-funded research, and not to his/her title or the amount or source of remuneration.

Other respondents suggested the definition should be expanded to include other types of activities, or to include people in a position to influence the design, conduct, or reporting of the research. We have retained the focus of the definition on Investigators who are responsible for the design, conduct, or reporting of research for the reasons discussed above.

Consistent with our proposal in the NPRM, we have also eliminated the reference to the Investigator's spouse and dependent children in this definition, as we believe that such reference is more appropriate to include in the SFI definition, below.

9. Key personnel. In parallel to the use of the term ''senior/key personnel'' in making FCOI information publicly accessible for research grants and cooperative agreements under 42 CFR 50.605, the term ''key personnel'' is used for research contracts under 45 CFR 94.5. Therefore, we thought it would be useful to include a separate definition for this term in the final rule, to clarify the exact meaning: the PD/PI and any other personnel considered to be essential to work performance in accordance with HHSAR subpart 352.242–70 and identified as key personnel in the contract proposal and contract.

10. Manage. We proposed this definition in the NPRM to mean taking action to address an FCOI, which includes reducing or eliminating the FCOI, to ensure that the design, conduct, and reporting of research will be free from bias or the appearance of bias. Consistent with our discussion in the NPRM, we have included a modified version of this definition in the final rule as part of a wider reconsideration of the concepts of managing, reducing, and eliminating an FCOI. In the 1995 regulations, these concepts were typically listed separately; [19] suggesting that reducing or eliminating an FCOI may not be the same as managing an FCOI. We believe that it is more appropriate to consider the reduction or elimination of an FCOI as alternate means of managing an FCOI, depending on the circumstances.

This revision is not intended, as suggested by one respondent, to imply that reduction or elimination is the only acceptable means of managing an FCOI. To address this concern, we have changed the definition in the final rule to read ''* * * to take action to address a financial conflict of interest, which can include reducing or eliminating the financial conflict of interest * * *'' Another respondent agreed with the definition, while a third thought it should be expanded to include activities beyond the design, conduct, or reporting of research and to state that the ultimate goal is elimination. Another respondent thought that certain types of SFIs should be specified as requiring elimination or reduction. In response to these related comments, we want to clarify that we do not intend to imply that every FCOI must be eliminated; the goal of the regulations is to ensure appropriate management so as to maintain objectivity of the research. Additionally, as discussed above, we believe ''design, conduct, or reporting'' covers the major responsibilities related to the PHS-funded research, so we have not expanded the scope of the definition. One respondent suggested that ''ensure'' is impossible to enforce. To address this concern, we have included the phrase ''to the extent possible'' in the definition. Finally, respondents suggested the deletion of the phrase ''appearance of bias.'' We have made this change, as we agree that this phrase can be interpreted as overly broad and ambiguous.

11. PD/PI. We proposed this definition in the NPRM to mean a Project Director or Principal Investigator of a PHS-funded research project. In the final rule, to improve clarity, we have noted that the PD/PI is included in the definition of senior/key personnel in 42 CFR 50.603, and in the definition of key personnel in 45 CFR 94.3.

12. PHS. Consistent with our proposal in the NPRM, we have revised the definition of ''PHS'' to include a specific reference to NIH in order to clarify that Institutions applying for, or receiving, research funding from NIH are subject to the regulations. This language remains unchanged from that proposed in the NPRM; however, as a technical correction to improve clarity and accuracy, we have deleted the reference to ''an operating division.''

13. Research. Consistent with our proposal in the NPRM, we have revised the definition of ''research'' to include a non-exhaustive list of examples of different types of PHS funding mechanisms to which the definition applies. As revised, the definition under 42 CFR 50.603 includes any activity for which research funding is available from a PHS Awarding Component through a grant or cooperative agreement, whether authorized under the PHS Act or other statutory authority, such as a research grant, career development award, center grant, individual fellowship award, infrastructure award, institutional training grant, program project, or research resources award. The definition under 45 CFR 94.3 includes any activity for which research funding is available from a PHS Awarding Component through a contract, whether authorized under the PHS Act or other statutory authority. We also added the terms ''study or experiment'' to enhance clarity. A few respondents requested that the definition exclude certain types of grants such as those for educational activities, training, or construction. We note that PHS funds a wide variety of award types and there may be some research components within award types that are not specifically labeled ''research'' awards. It is important that the information on SFI related to such activities be provided to the Institution for evaluation of the relatedness to PHS-funded research and the possibility of an FCOI. Therefore, we believe it would not be prudent to limit the types of PHS-funded research activities that are subject to these regulations and we did not make this change.

One respondent suggested the addition of examples for the term ''product development'' in the definition. We agree that this is useful and have added the examples of product development (a diagnostic test or drug) and of products of basic and applied research (a published article, book, or book chapter). Another respondent suggested that reference to the regulations be included in specific Requests for Applications or Requests for Proposals to clarify exactly when the regulations are applicable. We believe this comment is addressed by the general provision of Web links to and citations of applicable policy

[18] 42 CFR 50.603 and 45 CFR 94.3.

[19] 42 CFR 50.605(a) and 45 CFR 94.5(a).

requirements and terms and conditions of awards on Notices of Award for all PHS funded grants and cooperative agreements and in all contracts awarded by the PHS that are for research.

14. Senior/key personnel. The NPRM uses this term in the proposal and discussion of the management and posting of FCOI under 42 CFR 50.605. Therefore, we thought it would be useful to include a separate definition for this term in the final rule, to clarify the exact meaning: the PD/PI and any other person who the Institution identifies as senior/key personnel in the grant application progress report, and any other report submitted to the PHS by the Institution under this subpart. This definition is in parallel to that of the term ''key personnel'' used in making FCOI information publicly accessible for research contracts under 45 CFR 94.5.

15. Significant Financial Interest. In the NPRM, we proposed to revise substantially the SFI definition,[20] incorporating the proposed definitions of ''financial interest'' and ''institutional responsibilities'' described above. Below is a discussion of public comments related to the implementation of these changes, using the categories referenced in the NPRM to highlight differences from the 1995 regulations.[21]

Institutional responsibilities: Some respondents suggested that the disclosure requirement in the 1995 regulations,[22] *i.e.,* SFIs that Investigators deem related to the PHS-funded research, is sufficient. We note that the NPRM's proposal to expand the definition of SFI was influenced by the suggestions of many respondents to the ANPRM who supported this change. A few respondents agreed that expanding SFIs subject to disclosure by an Investigator to an Institution to include those that reasonably appear to be related to the Investigator's ''institutional responsibilities'' is warranted. Many others, however, suggested that the SFIs to be disclosed should be limited to those that reasonably appear to be related to the Investigator's ''research responsibilities.'' We have considered this suggestion and believe that since the definition of ''research responsibilities'' is not clear-cut, this change would once again place the responsibility on the Investigator for deciding which SFIs should be disclosed to the Institution (similar to the 1995 regulations) and may not provide the Institutions with the full complement of information needed to evaluate the potential for FCOI. For example, an Investigator is on the board of a pharmaceutical company and believes that this service draws on the Investigator's clinical expertise rather than research knowledge. If the SFI definition is confined to ''research responsibilities'', the Investigator may not disclose the income from this activity to the Investigator's Institution. Such income definitely would fall under ''institutional responsibilities'', however, as the Investigator is on the clinical faculty of the Institution.

Moreover, we note that the scope of activities that need to be disclosed by the Investigator is limited by the fact that the SFI definition excludes income from seminars, lectures, or teaching engagements sponsored by a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education; or income from service on advisory committees or review panels for a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education.

One respondent proposed that the regulations specify particular relationships and types of interests that should be disclosed. We have considered this suggestion and believe that limiting the scope of SFIs that an Investigator is required to disclose to his or her Institution may exclude SFIs in activities that have the potential to affect the objectivity of PHS-funded research. Therefore, we have retained the language proposed in the NPRM.

One respondent suggested that PHS funding could change an Investigator's institutional responsibilities and suggested that SFI disclosures should be based on the anticipated responsibilities if funding is awarded. We have not changed the regulations in this regard, because we believe this concern would be addressed by the Institution's FCOI policy; *i.e.,* any time there is a significant change in an Investigator's institutional responsibilities (whether in relation to PHS funding or not), Institutions should consider whether this would require the Investigator to update his or her SFI disclosures.

Other respondents questioned whether specific types of income, such as clinical work within private or university practice or teaching a craft, would need to be disclosed. Income from any activity that is related to the Investigator's institutional responsibilities as defined by the Institution that meets the monetary threshold must be disclosed. Another suggested that payment related to the accrual of patients to clinical trials should be included in the definition. If the individual receiving the payment meets the definition of ''Investigator'' under the regulations, such payment would be included in the SFI definition and should be disclosed.[23]

Monetary threshold: Respondents submitted a wide range of comments on the monetary threshold proposed in the NPRM. Some supported the $5,000 threshold; others suggested that the threshold of $10,000 in the 1995 regulations should be retained; and many suggested that the threshold be lowered even further to $100 or zero. We have considered all the comments and we believe that the $5,000 threshold proposed in the NPRM provides the appropriate balance between the administrative burden associated with disclosure and review of SFIs and the intended benefit in promoting objectivity in research.

Some respondents requested that the disclosure thresholds be harmonized with those of other Federal agencies such as the FDA and the National Science Foundation or with the disclosure provisions of the Affordable Care Act. While there may be some similarity in intent, the numerous disclosure requirements of other Federal laws, regulations, or policies are not necessarily comparable to those

[20] 75 FR 28705 (May 21, 2010).

[21] Under the 1995 regulations, an SFI means anything of monetary value, including but not limited to, salary or other payments for services (*e.g.,* consulting fees or honoraria); equity interests (*e.g.,* stocks, stock options or other ownership interests); and intellectual property rights (*e.g.,* patents, copyrights and royalties from such rights). The term does not include: (1) Salary, royalties, or other remuneration from the applicant Institution; (2) any ownership interests in the Institution, if the Institution is an applicant under the SBIR/STTR programs; (3) income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities; (4) income from service on advisory committees or review panels for public or nonprofit entities; (5) an equity interest that when aggregated for the Investigator and the Investigator's spouse and dependent children meets both of the following tests: does not exceed $10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a five percent ownership interest in any single entity; or (6) salary, royalties, or other payments that when aggregated for the Investigator and the Investigator's spouse and dependent children over the next 12 months, are not expected (or, in the case of PHS contracts, are not reasonably expected) to exceed $10,000.

[22] 42 CFR 50.604(c)(1) and 45 CFR 94.4(c)(1)

[23] Alternatively, if the commenter is concerned about (improper) payment to an Institution under these circumstances, we note that institutional conflicts of interest are addressed in section IV of this final rule.

specified in these regulations. For example, Title VI, Section 6002 of the Affordable Care Act requires disclosure by the entities providing the payment. FDA, for purposes of financial disclosure by clinical investigators, has defined *significant payment of other sorts* as payments made by the sponsor of a covered study to the investigator or the institution to support activities of the investigator that have a monetary value of more than $25,000, exclusive of the costs of conducting the clinical study or other clinical studies.[24] Due to the extent of potential differences in the nature, scope, and applicability of Federal disclosure requirements, we do not agree that it is feasible to harmonize all requirements at this time, although we believe these regulations could serve as a basis for ongoing collaboration and coordination regarding the topic of conflicts of interest.

Other respondents suggested that different disclosure thresholds should be instituted for research depending on whether it involves human participants, drugs, or devices. As discussed in the NPRM, we posed a number of questions in the ANPRM on the issue of whether the regulations should be amended to require specific approaches related to certain types of research or alternatively, specific types of financial interests or FCOI.[25] The majority of the respondents to the ANPRM thought that this approach would not account for the full range of research projects as well as the large variation in circumstances in which FCOI may arise. We agree and note that the monetary threshold is the same regardless of the type of research, financial interest, or identified FCOI at issue.

Timing: The NPRM proposed to change the timing for determining whether remuneration represents an SFI. The 1995 regulations excluded aggregated payments (including salary and royalties) that are ''not expected to exceed'' (or, in the case of PHS contracts, are ''not reasonably expected to exceed'') the monetary threshold ''over the next 12 months.'' Under the revised definition proposed in the NPRM, at issue is remuneration (including salary and any payment for services not otherwise identified as salary) received from an entity ''in the 12 months preceding the disclosure.'' We have included this change in the final rule; we believe it will help Institutions and Investigators to determine more accurately whether or not a financial interest represents an SFI because the payments have already occurred and are likely to have been documented. Moreover, to the extent an Investigator receives additional remuneration from an entity after completing an initial SFI disclosure, such remuneration would be subject to the Investigator's ongoing disclosure obligations assuming the monetary threshold was met or exceeded.

Several respondents suggested that the 1995 regulations' disclosure period is more consistent with the aim of maintaining objectivity in research. Some suggested that the time period for disclosure include both the preceding and the next 12 months, and one suggested that the period cover the duration of the award. We do not agree with these suggestions. In addition to disclosing SFIs received in the 12 months preceding the disclosure, Investigators are required to disclose new SFIs to the Institution within 30 days, and if payments received after the initial disclosure give rise to an SFI that is determined to be an FCOI by the institutional official(s), the Institution is required to submit an FCOI report to the PHS Awarding Component. Consistent with our proposal in the NPRM, the final rule also includes a requirement for annual updates. We believe this combination of provisions provides reasonable coverage of an Investigator's SFIs related to the PHS-funded research project, and allows a more accurate listing of SFIs by Investigators. Institutions are free to expand upon these requirements in their institutional policies and when considering whether an SFI is an FCOI with regard to the PHS-funded research.

Some respondents inquired how a payment or reimbursement that occurred before a PHS award should be reviewed in relation to the PHS-funded research. Although such considerations are dependent on the context of the SFI, the regulations do not prevent Institutions from taking into account whether the Investigator has an ongoing financial relationship with the entity providing the payment or reimbursement or whether the payment or reimbursement was limited in duration.

One respondent suggested that different disclosure periods should be instituted for different types of research. As discussed in the NPRM and above, we posed a number of questions in the ANPRM on the issue of whether the regulations should be amended to require specific approaches related to certain types of research or alternatively, specific types of financial interests or FCOI. The majority of the respondents to the ANPRM thought that this approach would not account for the full range of research projects as well as the large variation in circumstances in which FCOI may arise. As a result, the regulations impose uniform requirements, regardless of the type of research, financial interest, or identified FCOI at issue.

Examples of payment for services: The definition of SFI under the 1995 regulations referenced as examples of payments for services, receipt of consulting fees, or honoraria. In the NPRM, we proposed to add ''paid authorship'' and ''travel reimbursement'' as additional examples.[26]

With regard to ''paid authorship,'' although it should be clear that receipt of payment from an entity in exchange for drafting a publication constitutes payment for services, we believe it is important to reference this form of payment specifically in the regulations. We are particularly concerned about situations in which Investigators may have accepted payment from private entities, in return for allowing their names to be used as authors on publications for which they had very limited input. This practice has come under increasing scrutiny in recent years and we wish to make it clear to Institutions and Investigators that such activity may be subject to the disclosure and reporting requirements depending on the circumstances of a given case, such as the amount of payment. One respondent noted that remuneration from authorship of textbooks is not considered an FCOI at their Institution. We note that the regulations only require disclosure of such SFI by the Investigator to his or her Institution. The Institution makes the determination as to whether the SFI constitutes an FCOI, based on its review of the specific circumstances. Another respondent suggested that payments to faculty authors from publishers should be excluded from the SFI definition while payments from companies not engaged primarily in publishing should be included. We do not agree with this suggestion, because we believe that it may be difficult to draw a distinction between companies engaged primarily in publishing (*i.e.,* ''publishers'') and those that are not, leading to inconsistent disclosures. Therefore, we retained the ''paid authorship'' example in the definition, as proposed in the NPRM.

With regard to ''travel reimbursement,'' while one respondent agreed that this should be included in the SFI definition, many objected to its inclusion on the grounds that such

[24] 21 CFR 54.2(f).

[25] 74 FR 21612 (May 8, 2009).

[26] 75 FR 28705 (May 21, 2010).

payments do not constitute income to the Investigator and requiring their disclosure would constitute a burden, as in many cases the Investigator is not aware of the value of the reimbursement. We have considered these comments carefully and appreciate that for Investigators, travel to scientific meetings and to present his/her research to colleagues and other interested parties is an integral part of the scientific research enterprise and affords many important opportunities for forging relationships and collaborations among researchers. The provisions in the revised regulations are not intended to discourage this type of travel. We also appreciate that requiring Investigators to disclose the value of travel reimbursements could be difficult, particularly in the case of sponsored travel, which is paid on behalf of the Investigator and not reimbursed to the Investigator, so that the exact monetary value may not be readily available. Nonetheless, depending on the source of funding and other circumstances (*e.g.,* destination, duration) of specific travel, the Institution may consider whether that sponsored travel could affect the design, conduct, or reporting of PHS-funded research. In order to minimize the burden on the Investigator while providing the Institution with the appropriate level of information, we have added another category (paragraph 2) to the SFI definition that addresses the disclosure of reimbursed and sponsored travel. The Institution's FCOI policy will specify the details of this disclosure, which will include, at a minimum, the purpose of the trip, the identity of the sponsor/organizer, the destination, and the duration. Although the regulations do not require disclosure of the monetary value of the sponsored or reimbursed travel, in accordance with the Institution's FCOI policy, the Institutional official(s) can determine if further information is needed, including a determination or disclosure of monetary value, in order to establish whether the travel constitutes an FCOI with the PHS-funded research. In addition, travel that is reimbursed or sponsored by a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education is not subject to this disclosure requirement.

We considered the alternative of revising the rule to exclude ''reasonable and customary'' travel. We did not revise the rule in this manner because we believe that this puts the responsibility for defining ''reasonable and customary'' onto the Investigator, which may lead to inconsistency in disclosure.

Royalties & Intellectual Property: Under the 1995 regulations, royalties are included among the ''payments'' subject to the $10,000 threshold. Under the revisions proposed in the NPRM, which we have implemented, the $5,000 threshold would apply to equity interests and ''payment for services,'' which would include salary but not royalties. Royalties nevertheless are potentially subject to disclosure, as are other interests related to intellectual property. Specifically, the revised definition applies to any of the following: intellectual property rights (*e.g.,* patents, copyrights), royalties from such rights, and agreements to share in royalties related to intellectual property rights. As discussed further below, however, royalties received by the Investigator from the Institution would still be excluded from the SFI definition if the Investigator is currently employed or otherwise appointed by the Institution.

One respondent inquired whether Investigators should disclose intellectual property interests when a patent application is submitted or only when the patent is granted. Since income related to an intellectual property interest may be received before a patent is issued we would expect institutional policies to require disclosure upon the filing of a patent application or the receipt of income related to the intellectual property interest, whichever is earlier. We have also clarified our intent that the disclosure requirements include intellectual property interests by adding a specific reference to ''interests'' to the existing reference to ''rights.''

Many respondents requested further clarification as to the thresholds associated with these intellectual property interests. The threshold of $5,000 applies to licensed intellectual property rights (*e.g.,* patents, copyrights), royalties from such rights, and agreements to share in royalties related to licensed intellectual property rights. Several respondents suggested that in the rare cases when unlicensed intellectual property is held by the Investigator instead of flowing through the Institution, it should be excluded from the definition as it is difficult to determine the value of such interests. We agree that it is difficult to determine the value of such interests, and have revised the SFI definition to include intellectual property rights and interests (*e.g.,* patents, copyrights) upon receipt of income related to such rights and interests. Therefore unlicensed intellectual property that does not generate income is excluded. Nonetheless, such interests have the potential to become significant and generate income, at which point they would become subject to the regulations.

Exclusions: Consistent with the NPRM, we have modified the types of interests that are specifically excluded from the SFI definition. For example, the NPRM definition only excludes income from seminars, lectures, and teaching engagements, if sponsored by a Federal, state, or local government agency, or an Institution of higher education as defined at 20 U.S.C. 1001(a). Similarly, in the NPRM we proposed that income from service on advisory committees or review panels would only be excluded if from a Federal, state, or local government agency, or an Institution of higher education as defined at 20 U.S.C. 1001(a). We proposed this change due to the growth of non-profit entities that sponsor such activities since the 1995 regulations were promulgated. Some of these non-profit entities receive funding from for-profit entities that may have an interest in the outcome of the Investigators' research (*e.g.,* foundations supported by pharmaceutical companies). One respondent suggested that all income should be included in the SFI definition. We believe that the final rule strikes an appropriate balance regarding the income that must be disclosed as an SFI. On the other hand, we received many suggestions for additional types of non-profit Institutions for which income from seminars, lectures, or teaching engagements and from service on advisory committees or review panels could be excluded, *e.g.,* professional or engineering societies, Institutions that provide competitive research grants, academic medical centers, and Institutions that meet the standards of the Accreditation Council for Continuing Medical Education. Other respondents suggested that disclosure be limited to income from non-profit organizations that are primarily supported by for-profit companies. Another suggested the definition exclude activities that primarily support higher education. We have not adopted all these suggestions because we believe that difficulties in identifying the funding sources of many non-profit organizations would pose a greater obstacle to Investigators when deciding which SFI to disclose to their Institution than they would to the Institution when

evaluating such SFI. Therefore, it would seem preferable for the Institution to receive and evaluate the information.

Nonetheless, we agree with respondents that limiting exclusions from disclosure to income from Federal, state, or local government agencies, and Institutions of higher education as defined at 20 U.S.C. 1001(a) is unnecessarily narrow. Therefore, we have revised the SFI definition in the final rule to exclude salary, royalties, or other remuneration paid by the Institution to the Investigator if the Investigator is currently employed or otherwise appointed by the Institution; any ownership interest in the Institution held by the Investigator, if the Institution is a commercial or for-profit organization; income from seminars, lectures, or teaching engagements sponsored by a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education; or income from service on advisory committees or review panels for a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education.

One respondent inquired whether income received from seminars, lectures, or teaching engagements sponsored by a Federal, state, or local government agency; or income from service on advisory committees or review panels for a Federal, state, or local government agency, but paid by a private contract organization acting for that government agency, is excluded from the SFI definition. If a private organization is acting as a contractor to the Federal, state, or local government agency, for the purposes of these regulations, such income is excluded from the definition.

The 1995 regulations excluded from the SFI definition any ownership interests in the Institution, if the Institution is an applicant under the SBIR Program. As proposed in the NPRM, we have broadened the exclusion to cover any ownership interests in the Institution if the Institution is a commercial or for-profit organization (whether or not the Institution is an applicant under the SBIR Program). A few respondents requested further clarification, of situations in which an Investigator is employed by an Institution and also has equity in a for-profit company. In those cases, his or her equity would only be excluded from disclosure requirements when the for-profit company is the Institution that is applying for, or that receives, the PHS research funding in which the Investigator is participating.

As proposed in the NPRM, we have also limited the exclusion in the 1995 regulations for salary, royalties, or other remuneration paid by the Institution to the Investigator to circumstances in which the Investigator is currently employed or otherwise appointed by the Institution. In response to questions from a number of respondents, we have also clarified that intellectual property rights assigned to the Institution and agreements to share in royalties related to such rights are also excluded from the SFI definition. Other respondents suggested that royalties and intellectual property rights that are provided by the Institution should not be excluded from the definition as they could affect the objectivity of the PHS-funded research. We do not believe it would be useful to increase the disclosure burden on the Investigator by requiring disclosure to the Institution of information the Institution already has available. However, we note that Institutions have the flexibility to require such disclosures in their own policies. One respondent suggested that such royalties continue to be excluded from the SFI definition if an Investigator transfers to another Institution. In that case, however, the new Institution is not the source of the royalties and the exclusion would not apply; therefore such royalties would be included in the SFI definition.

Many respondents requested that income from mutual funds and retirement accounts be explicitly excluded from Investigator disclosure requirements, to the extent that Investigators do not control the investment decisions made in these vehicles. We have provided guidance in the form of Frequently Asked Questions on the NIH Web site recognizing that interests in a pooled fund such as a diversified mutual fund may be sufficiently remote that it would not reasonably be expected to create a conflict of interest for a PHS-funded Investigator.[27] We have revised the regulations in accordance with this guidance to exclude income from investment vehicles, such as mutual funds and retirement accounts, as long as the Investigator does not directly control the investment decisions made in these vehicles.

One respondent requested that the definition cover any ''security,'' as defined by reference to the Securities Act of 1933, as amended, and suggested that there is no reason to exclude debt instruments. Although we have not implemented this suggestion in the final rule, we note that our definition addresses stock, a specific element of the definition of ''security'' under the Securities Act of 1933, 15 U.S.C. 77a *et seq.,* and that the regulations do not expressly exclude debt instruments. A few respondents suggested that the definition should go beyond the Investigator's spouse and dependent children to include interests held by more distant family members and/or friends. We have not made this change, because we believe that it would expand the scope of the regulations unnecessarily and create ambiguity. Some respondents suggested that the SFI definition include payments from individuals, as well as entities. We have not made this change because we typically would expect individual payors to be acting on behalf of or in connection to entities, and because the source of payment is not the primary focus of the SFI definition.

Several respondents requested that we revise the SFI definition to include ''domestic partners.'' Although we appreciate the interest in identifying individuals who share assets with, or control assets on behalf of, the Investigator through civil unions, powers of attorney, or other arrangements, we have not made that specific change to the final rule because we believe it is beyond the scope of these regulations to define the term ''domestic partners.'' However, we note that Institutions have the flexibility to incorporate this suggestion into their policies.

Finally, as a technical correction to the language proposed in the NPRM, we have deleted the reference to ''except as otherwise specified in this definition,'' to improve the overall clarity of the SFI definition.

16. Small Business Innovation Research (SBIR) Program. In the NPRM we removed the definition in the 1995 regulations for the SBIR Program since, in the proposed regulations this program was no longer excluded, and we had not separately defined other HHS research programs that were subject to the proposed regulations. As the SBIR Phase I applications are excluded from the final rule (see

[27] *http://grants.nih.gov/grants/policy/coifaq.htm#427*.

Am I required to disclose interests in mutual funds?

Please refer to your Institution's policy. An interest in a pooled fund such as a diversified mutual fund may be sufficiently remote that it would not reasonably be expected to create a conflict of interest for an Investigator funded by the NIH.

discussion above), we are including the definition in the final rule.

Responsibilities of Institutions Regarding Investigator Financial Conflicts of Interest (42 CFR 50.604, 45 CFR 94.4)

Consistent with the NPRM, we have substantially revised the responsibilities of Institutions regarding Investigator FCOI.

The 1995 regulations provided that each Institution must maintain an appropriate written, enforced policy on conflicts of interest that complies with the regulations.[28] In the NPRM we proposed revising this provision to require an Institution not only to maintain an up-to-date, written, enforced FCOI policy that complies with the regulations, but also to make such policy available via a publicly accessible Web site. We have included this requirement in the revised regulations at 42 CFR 50.604(a) and 45 CFR 94.4(a), because we believe that it fosters greater transparency and accountability with regard to institutional policies. Moreover, we have clarified that if an Institution does not have a current presence on a publicly accessible Web site (and only in those cases), the Institution may make the information available in writing within five business days of any request. If, however, the Institution acquires a presence on a publicly accessible Web site during the time of the PHS award, the requirement to post the information on that Web site will apply within 30 calendar days.

One respondent suggested that Institutions' policies should be filed with the PHS. We believe the requirement to make the policies publicly available renders this suggestion unnecessary. One respondent suggested that Institutions should be required to ''prominently'' post their FCOI policy on the Institution's Web site so that it would be easily accessible. We have not revised the regulations to include this requirement, because we understand that term could create ambiguity. We have used the term ''publicly accessible'' to communicate our intention that the public can readily obtain the information required under these regulations. In the event of any questions, we encourage members of the public to contact Institutions for instructions as to the location of their policy, and to report any enforcement concerns to the PHS Awarding Component. One respondent inquired as to whether this provision applies to subrecipients. We note that subrecipients that rely on their own policies would be subject to this requirement. However, if the subrecipient is relying on the policies of the awardee Institution, that Institution would be responsible for posting the policy.

Consistent with the NPRM, we have also revised this section to clarify that if an Institution's policy on FCOI includes standards that are more stringent than the regulations, the Institution shall adhere to its policy and shall provide FCOI reports regarding identified FCOI to the PHS Awarding Component in accordance with the Institution's own standards within the time periods required in the regulations. Many respondents indicated that this provision would provide a substantial disincentive to Institutions to adopt more stringent standards than those set forth in the regulations, and could lead to a lack of consistency in reporting and increased confusion.

We appreciate the concerns raised and discussed them carefully before making the final decision to retain this language in the final rule because of several mitigating factors. For example, the 1995 regulations indicated that the regulations constituted a minimum standard; *i.e.,* the Institution retained flexibility to add requirements to those in the regulations, as long as such requirements are consistent with the regulations. Specifically, 42 CFR 50.605 and 45 CFR 94.5 state: ''In addition to the types of conflicting financial interests described in this paragraph that must be managed, reduced, or eliminated, an Institution may require the management of other conflicting financial interests in its policy on financial conflicts of interest, as the Institution deems appropriate.'' Moreover, in regulatory guidance on this issue with regard to grants and cooperative agreements, NIH stated that Institutions could impose more stringent requirements than those in the regulation as long as the Institution's policies meet the minimum requirements of the regulation and each Investigator is informed of the Institution's policies; of the Investigator's disclosure responsibilities; and of the regulation.[29] In addition, the principle that an Institution must follow its own policies, even if they go beyond—but as long as they are consistent with—Federal policies and regulations, is an established standard of NIH grants policies and applies to the implementation of all terms and conditions of award for grants and cooperative agreements. Finally, we weighed the possible inconsistency in reporting resulting from implementation of this provision against the possible ramifications of the PHS Awarding Component being unaware of an FCOI related to PHS-funded research that was identified by the Institution. We concluded that full reporting of all Institution-identified FCOIs related to PHS-funded research is necessary for appropriate accountability by the Institution and for robust oversight by the PHS Awarding Component. Although the regulations do not specify a standardized Federal reporting form, as suggested by one respondent, the regulations identify necessary elements of the report (*e.g.,* 42 CFR 50.605(b)(3) and 45 CFR 94.5(b)(3)), and NIH provides a framework for reporting those elements through its online reporting system.

Also consistent with the NPRM, we are incorporating the requirement in the 1995 regulations that each Institution must inform each Investigator of its policy on conflicts of interest, of the Investigator's disclosure responsibilities, and of these regulations. This requirement is addressed as a new paragraph (b), and, as proposed in the NPRM, it includes an Investigator training requirement. However, we have modified the training requirement to accommodate suggestions raised in public comments. Specifically, the NPRM proposed that Institutions require Investigators to complete training regarding the Institution's FCOI policy, the Investigator's responsibilities regarding disclosure of SFI, and the regulations, prior to engaging in PHS-funded research and, thereafter, at least once every two years.

Although some respondents agreed with the training requirements as proposed, many other respondents raised reasonable alternatives. For example, most of the respondents on this topic agreed with the requirement for initial training of Investigators prior to engaging in PHS-funded research but thought that the Institution should determine the training frequency thereafter or that a period longer than two years should be specified. We considered the comments carefully and agree that every two years may be too frequent; however, we believe it is important to ensure that Investigators receive training beyond the initial period in order to maintain objectivity in PHS-funded research over the long term. Therefore, we have revised the provision in 42 CFR 50.604(b) and 45 CFR 94.4(b) to require Institutions to

[28] 42 CFR 50.604(a) and 45 CFR 94.4(a).

[29] NIH ''Frequently Asked Question'' B.4 at *http://grants.nih.gov/grants/policy/coifaq.htm.*

train Investigators prior to engaging in research related to any PHS-funded grant or contract, and at least every four years (a typical period of a PHS-funded research grant), and immediately when any of the following circumstances apply: (1) The Institution revises its financial conflicts of interest policies or procedures in any manner that affects the requirements of Investigators; (2) an Investigator moves to a new Institution; or (3) an Institution finds that an Investigator is not in compliance with the regulations or with the Institution's financial conflicts of interest policy or management plan.

One respondent proposed that training be required only of those PHS-funded Investigators who have FCOIs. We disagree with this suggestion, as this change would not fulfill the purpose of the training requirement, which is to inform all Investigators conducting PHS-funded research of the Institution's FCOI policy, their responsibilities regarding disclosure of SFI, and the regulations. A few respondents suggested that the mandated training include a discussion of ethical issues surrounding FCOI. We note that as long as the training covers the Institution's FCOI policy, the Investigator's responsibilities regarding disclosure of SFI, and the regulations, Institutions are free to adopt this suggestion, and to include any other issues they deem essential to accomplishing the stated objective of the training. One respondent suggested that the Institution's training materials be submitted to the PHS Awarding Component and that Investigators be required to certify completion of training to the PHS Awarding Component. We believe that this suggestion is addressed by the existing HHS requirement that institutional officials are responsible for ensuring compliance with all applicable Federal laws and regulations, including required certifications and assurances; such officials must provide a certification regarding compliance with the regulation—including the training requirement—with each application for funding.

Finally, several respondents requested that HHS provide training materials that Institutions can use to fulfill this requirement, as well as seminars or workshops that address implementation of the revised regulations. As in the past, NIH/HHS will continue to engage in outreach activities to promote compliance with the regulations, and will make resources available online, including guidance on policy development and a regulatory training module for Institutions and Investigators. Institutions should adapt these resources to incorporate information related to their specific policies and procedures, as needed.

Consistent with the NPRM, we have also implemented clarifications to the requirement in the 1995 regulations that, if the Institution carries out the PHS-funded research through subrecipients (*e.g.,* subcontractors or consortium members), the Institution must take reasonable steps to ensure that Investigators working for subrecipients comply with the regulations, either by requiring those Investigators to comply with the Institution's policy or by requiring the subrecipients to provide assurances to the Institution that will enable the Institution to comply with the regulations. As proposed in the NPRM, we are addressing these changes in a new subsection (c), though we are implementing minor changes to the proposed language to improve overall clarity as follows: An Institution that carries out the PHS-funded research through a subrecipient must incorporate as part of a written agreement with the subrecipient terms that establish whether the FCOI policy of the awardee Institution or that of the subrecipient will apply to the subrecipient's Investigators. If the subrecipient's Investigator must comply with the subrecipient's FCOI policy, the subrecipient shall certify as part of the agreement referenced above that its policy complies with the regulations. If the subrecipient cannot provide such certification, the agreement shall state that subrecipient Investigators are subject to the FCOI policy of the awardee Institution for significant financial interests that are directly related to the subrecipient's work for the awardee Institution.

Additionally, if the subrecipient's Investigators must comply with the subrecipient's FCOI policy, the agreement referenced above shall specify time period(s) for the subrecipient to report all identified FCOI to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to provide timely FCOI reports, as necessary, to the PHS as required by the regulations. Alternatively, if the subrecipient's Investigators must comply with the awardee Institution's FCOI policy, the agreement referenced above shall specify time period(s) for the subrecipient to submit all Investigator disclosures of SFIs to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to comply timely with its review, management, and reporting obligations under the regulations. Subsection (c) also requires that the Institution provide FCOI reports to the PHS regarding all FCOIs of all subrecipient Investigators consistent with the regulations. We believe these changes will clarify for Institutions and their subrecipients the requirements of both parties, which will promote greater compliance with the regulations.

Many respondents were concerned that these provisions would be difficult to operationalize as written in the NPRM, particularly in the case of foreign organizations. They suggested that awardee Institutions would not reasonably be able to evaluate the FCOI policies of the subrecipient Institution. We believe that this concern is alleviated by the requirement of a written agreement to reinforce a clear understanding of the expectations of the subrecipient and awardee Institution,[30] depending on whose policy will apply. To address a concern raised by another respondent, we have also added language to limit the SFI reported to the awardee Institution to those that are directly related to the subrecipient's work for the awardee Institution.

Some respondents suggested that the subrecipients report FCOIs identified for their Investigators directly to the PHS Awarding Component. Others proposed that subrecipients that are the direct recipients of other awards from the PHS Awarding Component be exempt from the certification process. We disagree with both suggestions. The PHS Awarding Component has a direct relationship only with the awardee Institution. Therefore, the awardee Institution is responsible for providing FCOI reports to the PHS regarding all financial conflicts of interest of all subrecipient Investigators, consistent with the regulations. These expectations apply whether or not the subrecipient serves as an awardee Institution to the PHS Awarding Component on other awards, as each award is considered separately for purposes of compliance with the regulations.

One respondent noted that there is no timeline specified for Institutions to provide the PHS all FCOI reports of all subrecipient Investigators. We have clarified our expectation that Institutions report subrecipient-identified FCOIs prior to the expenditure of funds and within 60 days of any subsequently identified FCOI by adding this language to subsection (c)(2).

One respondent proposed that the agreement between the awardee and

[30] The term ''awardee Institution'' is used here to distinguish it from the subrecipient Institution.

subrecipient Institutions, and the subrecipients' FCOI policies should be filed with the PHS. We believe that the submission of this information is not necessary unless specifically requested by the PHS Awarding Component since applicable HHS policy requires Institutions to certify compliance with the requirements of this and other regulations in each application or solicitation for funding. An Institution's failure to comply with the terms and conditions of award, including this regulation, may cause HHS to take one or more enforcement actions, depending on the severity and duration of the noncompliance.

Paragraph (d) of the NPRM required that an Institution designate an institutional official(s) to solicit and review disclosures of SFIs from each Investigator who is planning to participate in PHS-funded research. A few respondents suggested that the regulations be revised to stipulate the requirements for the designated official(s) and how the Institution should ensure that the designated official(s) do not themselves have conflicts of interest. We have not implemented those changes because we believe that the Institution is in the best position to determine the qualifications and characteristics of the designated official(s) in the Institution's policy.

The 1995 regulations required that, by the time an application or contract proposal is submitted to the PHS, each Investigator who is planning to participate in the PHS-funded research has submitted to the designated official(s) a listing of his/her known SFIs (and those of his/her spouse and dependent children): (i) That would reasonably appear to be affected by the research for which PHS funding is sought; and (ii) in entities whose financial interests would reasonably appear to be affected by the research. All financial disclosures must be updated during the period of award, either on an annual basis or as new reportable SFIs are obtained. As discussed above, the revised SFI definition includes SFIs that reasonably appear related to the Investigator's ''institutional responsibilities.'' Therefore, the requirement in the 1995 regulations to disclose SFIs, which we have adopted in paragraph (e) of the final rule, incorporates this revised definition, such that the scope of Investigator disclosures is no longer project specific, but rather pertains to the Investigator's institutional responsibilities. In response to a suggestion from a respondent, we have clarified that Investigators who have not previously disclosed their SFIs to the Institution's designated official(s) must do so no later than the time of application or date of contract proposal submitted for PHS-funded research.

One respondent suggested that Institutions should establish an internal database for disclosures of Investigator SFI which could be easily updated. We have not included this requirement because we are concerned that it could impose an unnecessary administrative burden and expense to Institutions. As long as Institutions have a process in place to comply fully with all regulatory requirements, they may collect disclosures from Investigators in the manner that is most appropriate for their policies and procedures.

Consistent with our proposal in the NPRM, as part of paragraph (e), we have also revised and clarified an Investigator's annual and ongoing, including *ad hoc,* disclosure obligations. Specifically, in addition to requiring that each Investigator who is planning to participate in the PHS-funded research disclose to the Institution's designated official(s) the Investigator's SFIs (and those of the Investigator's spouse and dependent children), the Institution must also require each Investigator who is participating in the PHS-funded research to submit an updated SFI disclosure:

(1) At least annually during the period of the award, including disclosure of any information that was not disclosed initially to the Institution or in a subsequent SFI disclosure, and disclosure of updated information regarding any previously disclosed SFI (*e.g.,* the updated value of a previously disclosed equity interest). A number of respondents agreed that annual disclosure by Investigators is necessary but suggested that the Institution should be free to determine the specific timing. We have revised paragraph (e)(2) to adopt this suggestion. Because of this change, we have declined the suggestion of another respondent to link the annual disclosure period to the Fiscal Year calendar. Another respondent suggested that the disclosure period should be event-driven, rather than annual. While we continue to believe that annual disclosure is appropriate, we note that the requirement for disclosing updated SFIs in subsection (e)(3), as described below, should address this concern by providing Institutions with information about Investigator SFIs that arise between the annual disclosure periods.

(2) Within 30 days of discovering or acquiring (*e.g.,* through purchase, marriage, or inheritance) a new SFI. A few respondents suggested that 30 days is too short a period for disclosure of new SFIs, and one respondent suggested that this requirement be changed to 60 days, consistent with the time-period specified in other parts of the regulations. After carefully considering the appropriate balance between affording Investigators sufficient time to disclose new SFIs as they arise and the need to review SFIs related to PHS-funded research in a timely manner, we have retained the 30 day period in subsection (e)(3).

A respondent suggested that requiring disclosure when an Investigator is planning to participate in PHS-funded research is too imprecise and requested that this phrase be revised. We have revised subsection (e)(1) to specify that disclosures must occur no later than the time of application or date of contract proposal submitted for PHS-funded research.

The 1995 regulations required an Institution to provide guidelines consistent with the regulations for the designated official(s) to identify conflicting interests and take such actions as necessary to ensure that such conflicting interests will be managed, reduced, or eliminated. Consistent with our proposal in the NPRM, we have reorganized and expanded this requirement in a re-designated paragraph (f), to clarify an Institution's obligations. First, the guidelines must address two related tasks, specifically, determination of whether an Investigator's SFI is related to the PHS-funded research and, if so related, whether the SFI is an FCOI. Under the 1995 regulations, the Investigator bore the responsibility for determining the relatedness of an SFI to the PHS-funded research as part of the disclosure process.

As discussed above, however, we have revised the definition of SFI to address ''institutional responsibilities''; consistent with this change, we have shifted the responsibility for determining whether an Investigator's SFI is related to PHS-funded research to the Institution. Specifically, an Investigator's SFI is related to PHS-funded research when the Institution, through its designated official(s), reasonably determines that the SFI: could be affected by the PHS-funded research; or is in an entity whose financial interest could be affected by the research. Although one respondent suggested that this definition is not sufficiently inclusive, we believe it encompasses the range of relationships between an Investigator's SFI and PHS-funded research. We note that this definition has been in effect since the 1995 regulations and remains consistent

with the guidance that NIH/HHS has offered on this issue since that time.

Many respondents agreed that the responsibility for determining whether an Investigator's SFI is related to the PHS-funded research should ultimately rest with the Institution; however, they were concerned that the proposed revisions in the NPRM did not allow Institutions to involve the Investigator in this process. They suggested that requiring Institutions to make this determination without the input of the Investigator would make the decision-making process more challenging. Because this was not the intent of the proposed language, we have revised paragraph (f) to explicitly state that the Institution may involve the Investigator in the designated official(s)'s determination of whether an SFI is related to the PHS-funded research. A few respondents suggested this responsibility should remain with the Investigator. We have weighed this suggestion and believe that the revised language strikes the appropriate balance between the Institution's ultimate responsibility for reviewing Investigator disclosures and the Investigator's responsibility to disclose all SFIs related to his or her institutional responsibilities.

In the Extension Notice, we requested comment as to whether the regulations should further clarify that, as part of the Institution's FCOI determination process, institutional officials must consider whether an Investigator's SFI was previously determined to be an FCOI at another Institution and subject to a management plan with regard to other PHS-funded research project(s). Many respondents suggested that requiring institutional officials to consider information on an FCOI from another Institution is unnecessary, as information regarding FCOIs would be available on a public Web site, as per the proposed revisions in the NPRM. They suggested that Institutions should be free to use their own policies and procedures to comply with the regulations. We have considered these comments and agree. With the expansion of Investigator disclosure to include all SFIs related to their institutional responsibilities and the requirement to ensure public accessibility of information about FCOIs of senior/key personnel for research grants and cooperative agreements and key personnel for research contracts, the likelihood of an Institution not receiving information about a particular SFI or FCOI is minimized.

One respondent suggested the following alternative approach: in a case where an Investigator moves from one Institution to another, the PHS Awarding Component would mediate the transfer of information related to any identified FCOI from the previous Institution to the new one, and the receiving Institution, while not bound by any previous management plan, would have to advise the PHS Awarding Component of its decision regarding that FCOI. Another suggested that Institutions should be required to notify the PHS Awarding Component of the imposition of a penalty on Investigators that limits their participation in PHS-funded research, and that the PHS Awarding Component should create a registry of these Investigators. In light of these comments, we have specified that updated disclosures should include any FCOI identified on a PHS-funded project that was transferred from another Institution. We also note that, as specified in 42 CFR 50.606(b) and 45 CFR 94.6(b), the HHS may inquire at any time (before, during, or after award) into any Investigator disclosure of financial interests and the Institution's review of, and response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of an FCOI. This would include situations in which an Investigator moves from one Institution to another.

To provide clarification regarding the determination of whether an Investigator's SFI is an FCOI, the re-designated paragraph (f) incorporates modified language moved from paragraph (a)(1) of the 1995 regulations, consistent with the NPRM. Specifically, this paragraph provides that an FCOI exists when the Institution, through its designated official(s), reasonably determines that the SFI could directly and significantly affect the design, conduct, or reporting of the PHS-funded research. As discussed above, the regulations also incorporate a revised definition of FCOI that is based on this language.

Consistent with our proposal in the NPRM, we have included the requirement in the 1995 regulations regarding FCOI management responsibilities in a separate paragraph (g), in which we clarified that the requirement includes management of any financial conflicts of a subrecipient Investigator pursuant to paragraph (c) of the revised regulations described above. We have also cross-referenced the Institution's revised management responsibilities specified in 42 CFR 50.605(a) and 45 CFR 94.5(a), including the development and implementation of a management plan and, if necessary, a retrospective review and a mitigation report regarding how any identified bias was addressed, as discussed in further detail below. As a related matter, we have included a new paragraph (h) that cross-references the Institution's revised and expanded reporting requirements in the new paragraphs 42 CFR 50.605(b) and 45 CFR 94.5(b).

Consistent with our proposal in the NPRM, we have retained, but re-designated, the requirement of paragraph (e) of the 1995 regulations, *i.e.,* Institutions must maintain records of all financial disclosures and all actions taken by the Institution with respect to each FCOI for at least three years from the date of submission of the final expenditures report or final payment, or where applicable, for the other time periods specified in 45 CFR 74.53(b) or 48 CFR part 4, subpart 4.7. Specifically, in paragraph (i) of 42 CFR 50.604 and 45 CFR 94.4, we have included a responsibility to maintain records relating to all Investigator disclosures of financial interests and the Institution's review of, and response to, such disclosures (whether or not a disclosure resulted in the Institution's determination of an FCOI) and actions under the Institution's policy or retrospective review, if applicable, for that time period. We believe that this revision helps clarify for Institutions our intent for the record retention obligation to apply not only in cases in which the Institution has identified an FCOI, but to all Investigator SFI disclosures, whether or not such disclosure generated a response by the Institution.

One respondent suggested that retaining records for three years is insufficient. We disagree; this requirement is not substantially different from the requirement in the 1995 regulations, and is consistent with the PHS record retention policy. Another suggested that, since some awards continue for many years and disclosures now relate to the institutional responsibilities of Investigator, all records would have to be retained indefinitely. We disagree; as described in the NIH grants policy statement (*http://grants.nih.gov/grants/policy/nihgps_2010/nihgps_ch8.htm#_Toc271264975*), records relating to all Investigator disclosures of financial interests and the Institution's review of, and response to, such disclosures, do not need to be retained indefinitely. Instead, the information must be retained for each competitive segment for a period of three years following the date the final expenditures report or final invoice is submitted to the PHS Awarding Component. In response to another comment, we also note that the record retention requirements in this paragraph

apply to records of all financial disclosures and actions under the Institution's policy, even if the policy is more stringent than the regulations.

Additionally, the 1995 regulations required at paragraph (f) that Institutions establish adequate enforcement mechanisms and provide for sanctions where appropriate. Consistent with our proposal in the NPRM, we have revised this obligation in a re-designated paragraph (j) to require an Institution not only to establish adequate enforcement mechanisms and provide for employee sanctions, but also to provide for other administrative actions to ensure Investigator compliance as appropriate. One respondent suggested that the choice of enforcement mechanisms be left to the discretion of each Institution, and that the PHS should not prescribe specific enforcement mechanisms for use in any type of situation. We note that the revised language strikes a balance between preserving the Institution's discretion in this regard and in enabling the PHS Awarding Component to exercise proper oversight; *e.g.,* the language does not specify particular actions as ''adequate'' or ''appropriate,'' implicitly recognizing that the Institution and the PHS Awarding Component make those judgments on a case-by-case basis. Another respondent suggested that we consider revising the regulations to specify that FCOI committees, *i.e.,* institutional official(s), can disapprove or suspend PHS funding of Investigators who are not in compliance with these regulations. While this example may indeed account for appropriate action(s) under this provision and/or under the Remedies sections, we have not specified any one action in this particular context because of the need for discretion by the Institutions and the PHS Awarding Components, to account for the specific circumstances at issue. Additionally, providing this example in the regulatory text could create confusion between the suspension of an Investigator by an Institution under these regulations and the suspension or debarment of an Investigator by the PHS Awarding Component under 2 CFR part 376.

One respondent suggested that the PHS/HHS should be given enforcement power over any disclosure of significant financial interest that, although in technical compliance with the regulations is part of a plan or scheme to avoid the disclosure requirements, and referenced the Securities Act of 1933, as amended. We have not implemented this suggestion because we believe this concern is mitigated by the aforementioned revisions to this section and by the ability of the HHS to inquire at any time (before, during, or after award) into any Investigator disclosure of financial interests and the Institution's review of, and response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of an FCOI.

Finally, consistent with the NPRM, we have revised the certification requirement that was set forth in paragraph (g) of the 1995 regulations. Re-designated paragraph (k) requires an Institution to certify that the Institution (1) Has in effect at that Institution an up-to-date, written, and enforced administrative process to identify and manage FCOI with respect to all research projects for which funding is sought or received from the PHS; (2) shall promote and enforce Investigator compliance with the regulations' requirements including those pertaining to disclosure of SFIs; (3) shall manage FCOI and provide initial and ongoing FCOI reports to the PHS consistent with the regulations; (4) agrees to make information available, promptly upon request, to the HHS relating to any Investigator disclosure of financial interests and the Institution's review of, and response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of an FCOI; and (5) shall fully comply with the requirements of the regulations. Notably, this revised paragraph eliminates much of the certification language in the 1995 regulations regarding an Institution's reporting obligations. This change is consistent with other critical changes to the regulations that we have implemented; specifically, we have substantially revised and expanded the reporting requirements, and included a discussion of such requirements in the revisions to 42 CFR 50.605(b) and 45 CFR 94.5(b), as discussed below.

Management and Reporting of Financial Conflicts of Interest (42 CFR 50.605, 45 CFR 94.5)

Consistent with the NPRM, we have revised and expanded substantially the provisions of the 1995 regulations regarding management of FCOI to address requirements for both management and reporting of FCOI.

The 1995 regulations require at paragraph (a), that an Institution's designated official(s) review all financial disclosures and determine whether a conflict of interest exists; *i.e.,* the designated official(s) reasonably determines that an SFI could directly and significantly affect the design, conduct, or reporting of the PHS-funded research. If a conflict is identified, the official(s) must determine what actions should be taken by the Institution to manage, reduce, or eliminate it. Paragraph (a) also provides examples of conditions or restrictions that might be imposed to manage conflicts of interest, specifically public disclosure of SFIs, monitoring of research by independent reviewers, modification of the research plan, disqualification from participation in all or a portion of the research funded by the PHS, divestiture of SFIs, or severance of relationships that create actual or potential conflicts.

Per our proposal in the NPRM, we have revised the above language as part of a re-designated paragraph (a)(1) to require that, prior to the Institution's expenditure of any funds under a PHS-funded research project, the designated official(s) of an Institution shall, consistent with paragraph (f) of the preceding section (42 CFR 50.604 or 45 CFR 94.4): review all Investigator disclosures of SFIs; determine whether any SFIs relate to PHS-funded research; determine whether an FCOI exists; and, if so, develop and implement a management plan that shall specify the actions that have been, and shall be, taken to manage such FCOI. As noted in the preceding section, the Institution may involve the Investigator in determining whether an SFI is related to PHS-funded research.

One respondent suggested that this provision would require an Institution to identify and manage FCOI in advance of the Notice of Award and suggested a transition period of 60 days after award for the implementation of this provision, with an interim management plan in place during that time. In response, we note that this requirement refers to actions that need to be taken prior to expenditure of funds, not necessarily in advance of the award itself. In addition, development and implementation of an interim management plan for all identified FCOIs (instead of only those identified after the retrospective review discussed below) would seem to place an additional burden on the process of managing an identified FCOI, so we have declined that suggestion.

Some respondents suggested that the PHS Awarding Component or some other outside agency, but not Institutions, should have the responsibility for reviewing Investigator SFIs and identifying and managing FCOI, citing possible conflicts of interest of the designated institutional official(s), or the Institutions themselves. After considering this, we believe that the revisions that we have made to the regulations strike the

appropriate balance between the responsibilities of the Institution for determining and managing Investigator FCOI and the oversight responsibilities of the PHS Awarding Component. We believe that our revisions will strengthen the roles of all involved in this process. Additionally, we have included a discussion of institutional conflicts of interest in section IV of this final rule.

The most significant change that we have made to this section is the management plan requirement that we introduced in the NPRM. Although the 1995 regulations required Institutions to manage FCOI, the term ''management plan'' was not used. As we noted in the NPRM, many Institutions already have been developing and implementing management plans as a means of fulfilling their FCOI management responsibilities; explicitly incorporating this requirement in the regulations acknowledges the value of this practice as an important means to maintain objectivity in PHS-funded research across the research community. As indicated in the discussion of paragraph (b) below, the expanded reporting requirements include an obligation to report, at a minimum, a description of ''key elements'' of the Institution's management plan in certain FCOI reports.

As discussed in the NPRM, and for reasons explained above, we also have deleted the sentence in this section from the 1995 regulations that describes when an FCOI exists. A modified version of this sentence has been moved to the re-designated paragraph (f) of 42 CFR 50.604 and 45 CFR 94.4, as well as incorporated into a definition of FCOI in 42 CFR 50.603 and 45 CFR 94.3.

In the revised paragraph (a)(1), we have also included the following updated and expanded list of examples of conditions or restrictions that might be imposed to manage an FCOI: public disclosure of FCOI (*e.g.,* when presenting or publishing the research); disclosure of FCOI directly to participants in research projects involving human subjects research; appointment of an independent monitor capable of taking measures to protect the design, conduct, or reporting of the research against bias resulting from the FCOI; modification of the research plan; change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the research; reduction or elimination of a financial interest (*e.g.,* sale of an equity interest); or severance of relationships that create financial conflicts.

One respondent suggested that disclosure alone is not sufficient for management of FCOI. Others suggested that the regulations should define a specific standard for acceptable conduct of research when an FCOI with PHS-funded research has been identified (*e.g.,* adopting the guidelines for conducting medical research published by AAMC and AAU), which could include defining the SFI that would preclude an Investigator from being a PD/PI on PHS-funded projects or requiring the Institution to consider the interests of patients explicitly. Another suggested that the risk of advancing potentially conflicted research should be weighed against the risk of not advancing the research. Given the wide range of contexts in which a conflict with PHS-funded research may arise, we believe that specifying particular standards or specific criteria may not cover all types of FCOI. Therefore, we have declined these suggestions, though we note that Institutions may choose a variety of measures, including those proposed by the respondents, in their evaluation of SFIs and in any specific management plan. In addition, as discussed in the NPRM and above, we posed a number of questions in the ANPRM on the issue of whether the regulations should be amended to require specific approaches to management of FCOI related to certain types of research or alternatively, specific types of financial interests or FCOI. Many of the respondents to the ANPRM thought that this approach would not account for the full range of research projects as well as the large variation in circumstances in which FCOI may arise. Moreover, the regulations do not include specific provisions related to the type of research, financial interest, or identified FCOI at issue.

Finally, respondents were concerned that the flexibility afforded to Institutions in determining how to manage SFIs that were determined to be FCOIs will lead to a lack of consistency across Institutions in the evaluation and management of Investigator FCOIs. Given the wide variety of contexts in which FCOIs can arise and the differences among Institutions, some variation across Institutions is expected. We believe that Institutions are in the best position to evaluate the circumstances and determine the most appropriate management strategies for specific cases.

Additionally, we have included the two paragraphs that we introduced in the NPRM (paragraphs (a)(2) and (a)(3)), with modifications, to clarify an Institution's obligations in situations in which an Institution becomes aware of an SFI after the PHS-funded research is already underway. Specifically, paragraph (a)(2) states that whenever, in the course of an ongoing PHS-funded research project, a new Investigator participating in the research project discloses an SFI or an existing Investigator discloses a new SFI to the Institution, the designated official(s) of the Institution shall, within 60 days: Review the SFI disclosure; determine whether it is related to PHS-funded research; determine whether an FCOI exists; and, if so, implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage the FCOI. Depending on the nature of the SFI, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date of disclosure and the completion of the Institution's review.

Paragraph (a)(3) states that whenever an Institution identifies an SFI that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Institution during an ongoing PHS-funded research project (*e.g.,* was not timely reviewed or reported by a subrecipient), the designated official(s) shall, within 60 days: review the SFI; determine whether it is related to PHS-funded research; determine whether an FCOI exists; and, if so: (i) Implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such FCOI going forward; and (ii) In addition, whenever an FCOI is not identified or managed timely including:

- Failure by the Investigator to disclose an SFI that is determined by the Institution to constitute an FCOI;
- Failure by the Institution to review or manage such an FCOI; or
- Failure by the Investigator to comply with an FCOI management plan;

the Institution shall, within 120 days of the Institution's determination of noncompliance, complete a retrospective review of the Investigator's activities and the PHS-funded research project to determine whether any PHS-funded research, or portion thereof, conducted during the time period of the noncompliance, was biased in the design, conduct, or reporting of such research.

The Institution is required to document the retrospective review; such documentation shall include, but not necessarily be limited to, all of the following key elements:

1. Project number;
2. Project title;
3. PD/PI or contact PD/PI if a multiple PD/PI model is used;
4. Name of the Investigator with the FCOI;
5. Entity with which the Investigator has a financial conflict of interest;
6. Reason(s) for the retrospective review;
7. Detailed methodology used for the retrospective review (*e.g.,* methodology of the review process, composition of the review panel, documents reviewed);
8. Findings of the review (*i.e.,* facts and observations); and
9. Conclusions of the review (*i.e.,* determination and recommended actions).

If bias is found, the Institution is required to notify the PHS Awarding Component promptly and submit a mitigation report to the PHS Awarding Component. The mitigation report must include, at a minimum, the key elements documented in the retrospective review above and a description of the impact of the bias on the research project and the Institution's plan of action or actions taken to eliminate or mitigate the effect of the bias (*e.g.,* impact on the research project; extent of harm done, including any qualitative and quantitative data to support any actual or future harm; analysis of whether the research project is salvageable). Thereafter, the Institution will submit FCOI reports annually, as specified elsewhere in the regulations. Depending on the nature of the FCOI, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date that the FCOI or the Investigator's noncompliance is determined and the completion of the Institution's retrospective review.

As we explained in the NPRM,[31] these revisions are based, at least in part, on our experience working with Institutions and our observation that some Institutions may be more diligent about addressing potential FCOI at the onset of a PHS-funded research project than after the work is already underway. We also believe it is important to address in the regulations circumstances in which an Institution, for whatever reason, has not timely reviewed an SFI, particularly when such SFI is later determined to be an FCOI. In such circumstances, it is of course important for an Institution to manage the FCOI going forward; however, there is also a critical need to review and determine whether any bias was introduced into the research during the period of time prior to review and management of the FCOI. In the NPRM we proposed to address this need in paragraph (a)(3) by the introduction of a ''mitigation plan'' requirement,[32] which we have clarified in the revised regulations as a ''retrospective review'' and ''mitigation report,'' as provided above.

While one respondent agreed with the requirement for a mitigation plan in the case of a newly identified SFI that the Institution determines is an FCOI, many suggested that the proposed requirement for a mitigation plan was unnecessary. They thought that the goal of such a plan would be achieved by the review and management plan that Institutions are required to implement when they determine that an Investigator's SFI constitutes an FCOI, and that determining if there was bias in the design, conduct, or reporting of the PHS-funded research would be very difficult. Some respondents agreed, however, that it seems reasonable to expect the Institution to determine whether a mitigation plan is necessary. We have considered the comments and agree that the requirement for a mitigation plan may have been stated too broadly in the NPRM. Mitigation reports should only be used in cases where the Institution determines that a newly identified FCOI has resulted in bias in the design, conduct, or reporting of PHS-funded research. Respondents also suggested that the elements of the mitigation plan in the NPRM were unclear and requested additional guidance. To address these comments, we have revised the requirement, as provided above.

Paragraph (a)(4) requires the Institution to monitor Investigator compliance with the management plan on an ongoing basis until the completion of the PHS-funded research project. This paragraph dovetails with the new paragraphs (a)(2) and (a)(3), described above, by ensuring that the management actions taken by an Institution at the time an FCOI is identified continue to be followed by the Investigator(s) involved for the duration of the project.

In the NPRM we proposed to introduce at paragraph (a)(5) a new requirement to help the biomedical and behavioral research community as well as the public, Congress, and other interested parties monitor the integrity and credibility of PHS-funded research, and underscore our commitment to fostering transparency, accountability, and public trust. Specifically, we proposed a new requirement that, prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall make available via a publicly accessible Web site information concerning any SFI that meets the following three criteria: (A) The SFI was disclosed and is still held by the PD/PI or any other Investigator who has been identified by the Institution as senior/key personnel for the PHS-funded research project in the grant application, contract proposal, contract, progress report, or other required report submitted to the PHS; (B) the Institution determines that the SFI is related to the PHS-funded research; and (C) the Institution determines that the SFI is an FCOI.

We proposed to require that the information posted include, at a minimum, the following:

- The Investigator's name;
- The Investigator's position with respect to the research project;
- The nature of the SFI;
- And the approximate dollar value of the SFI (dollar ranges would be permissible; less than $20,000; less than $50,000; less than $100,000; less than or equal to $250,000; greater than $250,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value.

We proposed a requirement that the Institution update the posted information at least annually, and update the Web site within 60 days of the Institution's receipt or identification of information concerning any additional SFI that was not previously disclosed by the senior/key personnel for the PHS-funded research project, or upon the disclosure of an SFI by new senior/key personnel, if the Institution determines that the SFI is related to the PHS-funded research and is an FCOI. We proposed that information concerning the SFIs of an individual subject to this requirement shall remain available via the Institution's publicly accessible Web site for at least five years from the date that the information was most recently updated.

We received many comments on this proposed requirement. Some respondents did not support this requirement, as they were concerned about privacy issues. A few respondents suggested that posting information about Investigator FCOI without the appropriate context would foster a negative perception of FCOI, and a couple of comments indicated that the requirements might conflict with state laws. Others suggested this requirement is unnecessary, given the disclosure

[31] 75 FR 28697 (May 21, 2010).

[32] 75 FR 28707 (May 21, 2010).

provisions required under the recently enacted Affordable Care Act. One respondent proposed that this information should be included in applications or proposals for PHS-funded research but not posted on a publicly accessible Web site. Several suggested that additional discussion of this provision is needed and requested that this requirement be omitted from the final rule at this time.

We are strongly committed to the value of transparency to the public, and we also appreciate the concerns raised by these respondents. In keeping with the increasing number and range of public disclosure initiatives, including those in the aforementioned Affordable Care Act, we believe it is important to make available to the public critical information affecting PHS-funded research. Consistent with statutory goals and Executive Order 13563, we believe the language that we have finalized in this rule strikes a reasonable balance of the public and private interests at issue.

Some respondents suggested that the information be made available upon request, rather than posted on a publicly available Web site. We carefully considered this suggestion and agree that making the information available upon request is in accordance with the overall goal of enhanced transparency. The chosen approach promotes such transparency without imposing undue burdens. Therefore, we have revised the regulations to state that the Institution must make the information publicly accessible and may do so by posting the information on a public Web site or by making the information available in writing within five business days of any request.

Several respondents thought that the requirement would constitute a substantial burden and cited the necessity of setting up a database structure. We note that the final rule does not require the information to be provided in a specific format. Therefore, an Institution could choose to provide the information as a simple document or spreadsheet.

A few respondents suggested that all Investigator SFIs or all payments from pharmaceutical companies, not only those that were determined to constitute an FCOI with PHS-funded research, should be provided. We disagree; we continue to believe that providing information on only those SFIs determined to be FCOIs with PHS-funded research provides the appropriate level of transparency, particularly as not all SFIs are determined to relate to PHS-funded research. However, Institutions are free to expand upon this requirement by providing information on all SFIs of their Investigators. One respondent suggested that there should be a grading system to denote levels of conflicts of interest. We note that the determination of an FCOI by an Institution requires an assessment of how an SFI may cause an FCOI with the PHS-funded research, and how any such FCOI must be managed. It is at that point the Institution is judging the SFI and its potential to create an FCOI; there is no gradient associated with an FCOI itself. Additionally, we are concerned that this suggestion would undermine the premise that an Investigator's FCOI with PHS-funded research is not necessarily negative or prohibitive; the intent of the regulations is to ensure the appropriate management of such FCOIs in order to protect the objectivity of the research.

Other respondents supported the requirement for making information about Investigator's SFIs that were determined to be FCOIs with PHS-funded research publicly accessible. Many suggested that the PHS should host the information on a central Web site. Although we considered this suggestion at length, we continue to believe that Institutions are in a better position to provide and maintain this information. For example, the Institution will be able to put the information into context, as suggested by some respondents, *e.g.,* by relating the information to the Institution's FCOI policies or to other information about the Investigator, as the Institution deems appropriate.

Several respondents requested that the regulations provide additional guidance as to exactly which Investigators are covered by this provision. Consistent with our proposal in the NPRM, we have applied the requirement to senior/key personnel for research grants and cooperative agreements and key personnel for research contracts. To provide further clarity, we also have included a new definition of senior/key personnel in 42 CFR 50.603 and of key personnel in 45 CFR 94.3. Because these definitions of ''senior/key personnel'' and ''key personnel'' include the PD/PI, we have limited the references in this section to ''senior/key personnel'' or ''key personnel'' to avoid confusion and redundancy. Others requested that this provision apply only to Investigators and not to their spouse or dependent children, or at least that the names of the spouse and dependent children not be posted. We note that, consistent with the proposal in the NPRM, the information provided must include the name of the Investigator and the nature of the SFI. Any SFIs of the Investigator's spouse and dependent children will be attributed to the Investigator, such that only the Investigator's name would be provided.

Some respondents suggested that the dollar ranges included in this provision be the same as those required in reports of FCOI to the PHS Awarding Component. We agree with this suggestion and have revised the language accordingly. Although one respondent requested that no dollar amounts should be provided, while another suggested that the top range of $250,000 is too low, we believe that the revised ranges provide the appropriate level of information. Respondents made several suggestions as to the length of time the information should remain available, ranging from two to three years. We agree with the specific comments that it would be useful to align the duration of the requirement for providing this information with the PHS records retention policy. Accordingly, we have revised the regulations to require that information concerning the SFIs that were determined to constitute FCOIs shall remain available for at least three years from the date that the information was most recently updated.

One respondent asked for clarification of how the criterion for providing information on an SFI that is still held by the Investigator would apply to payments or reimbursements. We note that the requirements for making information publicly accessible relate to those SFIs that were determined to be FCOIs. The regulations do not prevent Institutions from taking into account, during that evaluation process, whether the Investigator has an ongoing financial relationship with the entity providing the payment or reimbursement or whether the payment or reimbursement was limited in duration.

Finally, several respondents suggested that time is needed to allow Institutions to set up systems required to comply with the requirements in this paragraph. In particular, many suggested that implementation should be delayed to October 2013 to coincide with the implementation of the disclosure provisions of the Affordable Care Act. As specified in the ''Compliance Date'' paragraph in the Dates section above, we have provided time for implementation of the revised regulations such that 365 days after publication of the final rule, Institutions receiving PHS funding will be required to ensure public accessibility of information on FCOIs of senior/key personnel on research grants and cooperative agreements and of key personnel on research contracts via a publicly accessible Web site or by

making the information available in writing within five business days of any request, as required by 42 CFR 50.605 (a)(5) and 45 CFR 94.5 (a)(5).

Additionally, as proposed in the NPRM and discussed above, we have maintained the requirement of paragraph (b) of the 1995 regulations but restated it as follows: ''In addition to the types of conflicting financial interests as defined in this subpart that must be managed pursuant to this section, an Institution may require the management of other financial conflicts of interests in its policy on financial conflicts of interest, as the Institution deems appropriate.''

As we also proposed in the NPRM, we have included a substantial revision and expansion of Institutions' existing FCOI reporting requirements. Specifically, paragraph (b)(1) discusses the timing of initial FCOI reports and references the proposed management plan requirements addressed in the above discussion of paragraph (a): Prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall provide to the PHS Awarding Component an FCOI report regarding any Investigator's SFI found by the Institution to be an FCOI and ensure that the Institution has implemented a management plan in accordance with this subpart. We have clarified that, in cases in which the Institution identifies an FCOI and eliminates it prior to the expenditure of PHS-awarded funds, the Institution shall not submit an FCOI report to the PHS Awarding Component.

Similarly, paragraph (b)(2) discusses the timing of follow-up FCOI reports, with examples of when such reports may be required as well as references to the proposed management plan and retrospective review requirements addressed above in the discussion of paragraph (a): for any SFI that the Institution identifies as conflicting subsequent to the Institution's initial FCOI report during an ongoing PHS-funded research project (*e.g.,* upon the participation of an Investigator who is new to the research project), the Institution shall provide to the PHS Awarding Component, within 60 days, a report regarding the FCOI and ensure that the Institution has implemented a management plan in accordance with the regulations. Where such an FCOI report involves an SFI that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Institution (*e.g.,* was not timely reviewed or reported by a subrecipient), the Institution also is required to complete a retrospective review to determine whether any PHS-funded research, or portion thereof, conducted prior to the identification and management of the FCOI was biased in the design, conduct, or reporting of such research. Additionally, if bias is found, the Institution is required to notify the PHS Awarding Component promptly and submit a mitigation report to the PHS Awarding Component.

Consistent with our proposal in the NPRM, paragraph (b)(3) discusses information that must be included in the FCOI reports required under paragraphs (b)(1) and (b)(2), described above. Specifically, such FCOI reports must include sufficient information to enable the PHS Awarding Component to understand the nature and extent of the financial conflict, and to assess the appropriateness of the Institution's management plan. In addition to the minimum specific elements of the FCOI report that we proposed in the NPRM,[33] we have included a requirement to name the entity with which the Investigator has a financial conflict of interest, to enhance transparency and accountability.

The majority of respondents supported the requirement that Institutions provide this additional information to the PHS Awarding Component, although one respondent thought this was unnecessary. Another respondent thought that requiring Institutions to report key elements of the management plan would include information that Investigators might want to keep private. We have retained this requirement because we believe that receiving information on specific aspects of the management plan is necessary to ensure appropriate oversight by the PHS Awarding Component. We note that the regulations state under 42 CFR 50.606(b) and 45 CFR 94.6(b) that to the extent permitted by law, HHS will maintain the confidentiality of all records of financial interests. Another suggested the regulations require reporting of the exact dollar amount of the financial interest, rather than ranges. We did not make this change; the exact amount of some types of financial interests, such as equity, may change frequently, which could create ambiguity and intensify the administrative burden.

One respondent inquired as to whether the rationale for including the conflicted Investigator in the research project should include application of the ''rebuttable presumption standard as articulated by AAMC'' (*i.e.,* ''Institutional policies should establish the rebuttable presumption that an individual who holds a significant financial interest in research involving human subjects may not conduct such research.'' [34]) We note that Institutions have the flexibility to use this standard in their evaluations of Investigator SFI, as long as they comply with the regulations. Other respondents questioned why the FCOI report should contain a rationale for including the conflicted Investigator in the research project since the credentials of the Investigator are included in the research application or proposal and were considered during the peer review process. Although our intent was to include the justification for permitting the Investigator with an FCOI to remain on the project, as opposed to the scientific rationale for the Investigator's involvement in the project, we have removed this element from the minimum requirements of the FCOI report to minimize confusion.

One respondent suggested it would be more efficient for Institutions to describe their monitoring measures annually for all FCOI reports rather than on a report-specific basis. We disagree; because the monitoring measures may differ depending on the requirements of the specific management plan, we believe that retaining that element in each report is important. Several respondents recommended deleting the requirement for a description of how the management plan will safeguard objectivity in the research project, as that is inherent in the management plan and should be apparent from the other information provided. We believe that documenting this element is important to ensure proper oversight; however, to address this comment, we have clarified this element to describe how the management plan is designed to safeguard objectivity in PHS-funded research.

One respondent suggested that this requirement be retained only for research involving human participants. As discussed in the NPRM and above, we posed a number of questions in the ANPRM on the issue of whether the regulations should be amended to require specific approaches to management of FCOI related to certain types of research or alternatively, specific types of financial interests or FCOI. The majority of the respondents to the ANPRM thought that this approach would not account for the full range of research projects as well as the

[33] 75 FR 28708 (May 21, 2010).

[34] AAMC Task Force on Financial Conflicts of Interest in Clinical Research: *Protecting Subjects, Preserving Trust, Promoting Progress—Policy and Guidelines for the Oversight of Individual Financial Interests in Human Subjects Research,* December 2001 *https://www.aamc.org/download/75302/data/firstreport.pdf.*

large variation in circumstances in which FCOIs may arise. As a result, the regulations, including the provisions in this paragraph, impose uniform FCOI management responsibilities, regardless of the type of research, financial interest, or identified FCOI at issue. Nonetheless, we note that Institutions are free to differentially manage FCOI depending on the nature of the research as long as they remain in full compliance with the regulations.

A few respondents requested that the regulations include additional examples of appropriate elements of a management plan, such as the use of independent monitors or a description of circumstances in which eliminating an FCOI is necessary. Given the wide range of circumstances in which FCOI may occur and the importance of tailoring institutional review and determination to each specific case, we believe that including additional examples may be interpreted as prescriptive and may be misconstrued as the only means of managing a particular type of conflict. Nonetheless, as described above, a list of examples of conditions or restrictions that might be imposed to manage an FCOI is described in 42 CFR 50.605(a)(1) and 45 CFR 94.5(a)(1). One respondent requested that the HHS develop templates for reporting FCOIs to the PHS Awarding Component. Because the regulations describe the basic information required in these reports, we believe that templates are unnecessary.

One respondent noted that the regulations do not state how the PHS Awarding Component will respond to the FCOI reports submitted by Institutions and recommended that HHS establish a policy on the responsibilities of the PHS Awarding Component, while another requested that agency staff receive training in the review of FCOI reports submitted to the PHS Awarding Component to ensure consistency. In response to these comments, we want to assure stakeholders that we have in place procedures and guidance on how staff should respond to FCOI reports submitted by Institutions, and we provide training on the evaluation of information that we receive from Institutions about FCOIs with PHS-funded research. We have taken and are continuing to take steps to increase oversight of the FCOI regulations. For example, NIH has:

- Conducted a thorough review of its system of oversight and compliance with respect to the FCOI regulations with the purpose of ensuring that a vigorous and effective oversight system is in place.
- Developed an FCOI Reporting Module as a tool for Institutions to electronically manage and submit FCOI reports to NIH. This module provides consistent reporting of FCOIs to the NIH. The system interfaces with the Web-based reporting tool for NIH staff already in use and will provide a full spectrum of tracking and oversight capabilities for NIH extramural staff. Mandatory use of the FCOI Module went into effect during FY 2009.[35]
- Developed an FCOI review protocol for use by staff in evaluating institutional FCOI reports and conducted mandatory training for extramural program and grants management staff on the use of the protocol and other FCOI issues.
- Routinely conduct in-depth reviews of cases of alleged FCOI involving extramural grantees and will continue to do so as new allegations arise.
- Evaluate and analyze grantee Institutions' FCOI policies and practices on an ongoing basis.
- Formed an FCOI Liaison group consisting of representatives from each of the NIH Institutes and/or Centers (IC) to discuss FCOI issues and guide FCOI activities in their respective ICs, with assistance from the Office of Extramural Research.
- Developed and included new language for NIH's ''Notice of Award'' template that highlights FCOI requirements.
- Developed and conducted a number of initiatives and site visits to evaluate institutional FCOI policies for compliance with the regulation. These initiatives include:
  - NIH Pilot Compliance Program on FCOI.
  - NIH Targeted Site Reviews.
- Following evaluation of the institutional FCOI policies, publicized on-line ''Lessons Learned'' to encourage enhanced compliance in the grantee community.
- Issued a number of communications to remind extramural grant recipients of their FCOI compliance responsibilities. These communications include:
  - Articles (NIH OER ''Nexus'' newsletter).
  - NIH Guide Notices.
  - E-mails to Institutional officials.
- Continue to respond to grantee questions directed to the OER FCOI mailbox concerning compliance with the Federal regulation.
- Provide education and outreach activities aimed at raising awareness of the issues surrounding FCOI at the institutional and Investigator levels (*e.g.,* NIH Regional Seminars; presentations at professional organizations and meetings).

These policies and guidance will be updated to incorporate all revisions implemented in this final rule, and we will continue to train the relevant staff, as necessary.

As proposed in the NPRM, paragraph (b)(4) includes a requirement to provide follow-up reports in cases in which an FCOI has been previously identified and reported. Specifically, for any FCOI previously reported by the Institution with regard to an ongoing PHS-funded research project, the Institution shall provide to the PHS Awarding Component an annual FCOI report that addresses the status of the FCOI and any changes to the management plan for the duration of the PHS-funded research project. The annual FCOI report must specify whether the financial conflict is still being managed or explain why the FCOI no longer exists. The Institution must provide annual FCOI reports to the PHS Awarding Component for the duration of the project period (including extensions with or without funds) in the time and manner specified by the PHS Awarding Component.

A few respondents suggested that providing a report annually when there has been no change to the FCOI or its management is unnecessary. We have considered this suggestion but believe that annual notification, even if there are no changes, is necessary to provide appropriate assurance to the PHS Awarding Component that an identified FCOI continues to be managed throughout the period of the PHS-funded research. One respondent suggested that the regulations allow the Institution to determine the frequency of reporting on identified FCOIs, depending on the type of PHS-funded research and the nature of the conflict. As discussed above, the regulations impose uniform FCOI management responsibilities, regardless of the type of research, financial interest, or identified FCOI at issue to account for the full range of circumstances in which FCOI may arise. Finally, while several respondents requested that the timing of the annual reports be determined by the Institution rather than the PHS Awarding Component, we have determined that the reports need to be provided in the time and manner specified by the PHS Awarding Component in order to facilitate appropriate and efficient oversight.

Finally, as proposed in the NPRM, paragraph (b)(5) includes language with regard to FCOI reporting that is similar to the language for FCOI management in the re-designated paragraph (a)(6), described above. Namely, in addition to

[35] OMB No. 0925–0417.

the types of financial conflicts of interest that must be reported pursuant to this section, an Institution may require the reporting of other FCOI in its policy on financial conflicts of interest, as the Institution deems appropriate.

Remedies (42 CFR 50.606, 45 CFR 94.6)

In both the NPRM and the Extension Notice, we welcomed public comments regarding the need to further revise and clarify this section, with respect to PHS' enforcement authority in the event of noncompliance with the regulations. Although we did not receive a high volume of comments on this topic, we took all feedback into consideration when finalizing the rule. We appreciate this opportunity to emphasize our commitment to effective oversight, which requires a partnership between the PHS Awarding Components and the Institutions. The regulations make clear that Institutions are responsible for ensuring Investigator compliance with institutional policies and procedures, and it is necessary for Institutions to establish appropriate consequences for noncompliance. However, it is equally essential that the PHS Awarding Components consider appropriate enforcement action. We believe that the revised regulations strike an appropriate balance of responsibilities in this regard.

In general, several respondents supported our proposal to refine the discussion of remedies in the 1995 regulations. Although one respondent expressed concern that the regulations seem to lack meaningful enforcement mechanisms and remedies, we believe that the Remedies section supports a range of possible corrective and remedial actions for the PHS Awarding Components and the Institutions to consider. Additionally, we believe it is important to weigh the specific circumstances of each particular case when pursuing such action(s) and to retain a full range of available options. For that reason, we have declined to incorporate some of the additional ''penalties'' that a few respondents suggested, such as monetary fines, dismissals, or jail times for Investigators; fines for Institutions; or, as one respondent suggested, ''referrals to the FDA * * * to bar participation by the individual in any clinical study designed to seek marketing approval.'' Likewise for that reason, we have not incorporated the suggestion of another respondent to include a specific requirement that if an Institution takes enforcement action against an Investigator, PHS should automatically ''impose penalties directly on an Investigator.''

We did, however, agree with one respondent that it would be helpful to clarify, in the grants context in particular, that institutional sanctions against an Investigator can travel with the Investigator upon his or her transfer to another Institution. Specifically, we have revised 42 CFR 50.606, paragraph (a), as follows: ''If the failure of an Investigator to comply with an Institution's financial conflicts of interest policy or a financial conflict of interest management plan appears to have biased the design, conduct, or reporting of the PHS-funded research, the Institution shall promptly notify the PHS Awarding Component of the corrective action taken or to be taken. The PHS Awarding Component will consider the situation and, as necessary, take appropriate action, or refer the matter to the Institution for further action, which may include directions to the Institution on how to maintain appropriate objectivity in the PHS-funded research project. The PHS may, for example, require Institutions employing such an Investigator to enforce any applicable corrective actions prior to a PHS award or when the transfer of a PHS grant(s) involves such an Investigator.''

This revision is intended to reference the range of options for the PHS Awarding Component to consider, depending on the specific circumstances at issue. For example, PHS may decide to initiate government-wide suspension or debarment of the Investigator under 2 CFR part 376; or to use enforcement measures under 45 CFR 74.62, *e.g.,* perhaps to make the approval of a transfer contingent upon the former Institution's disclosure of the corrective action—including the specific sanctions against the Investigator—to the new Institution; and/or to use special award conditions under 45 CFR 74.14, *e.g.,* perhaps to make the new Institution agree to take the same or similar action against that Investigator or explain to the PHS Awarding Component in writing why such action was not taken and what alternative measures will be used to ensure compliance.

One respondent suggested that the regulations include a description of a process to resolve differences of opinion between the PHS Awarding Component and the Institution regarding evaluation and management of FCOIs. We declined that change, as we believe it would be unnecessary and overly prescriptive to impose a particular process as a regulatory requirement; we will continue to work collaboratively with Institutions to resolve any such differences on a case by case basis, taking into consideration the specific circumstances of each disagreement. We note, however, that the Institution may have an opportunity for a hearing, appeal, or other administrative process or proceeding to which it is entitled under any applicable statute or regulation, in the event that the PHS Awarding Component takes enforcement action against the Institution.

As we proposed in NPRM, we also have revised paragraph (b) to clarify that the HHS may inquire at any time (*i.e.,* before, during, or after award) into any Investigator disclosure of financial interests and the Institution's review of, and response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of an FCOI. Consistent with the 1995 regulations, an Institution must submit, or permit on site review of, all records pertinent to compliance with the regulations. One respondent suggested that the regulations restrict the period during which HHS may inquire to a defined number of years after the end of the award period. We have not made this change because the effects of compromising objectivity in PHS-funded research may continue for some time after the award period. Another suggested that the regulations state that HHS may request information not deemed relevant to a finding of FCOI only for the purpose of investigating an allegation of noncompliance with these rules. Although we agree that an allegation of noncompliance is one circumstance that could trigger this provision, we disagree that it would be appropriate to limit HHS' oversight authority to this specific event.[36]

In paragraph (b), we also have retained the statement in the 1995 regulations that, to the extent permitted by law, HHS will maintain the confidentiality of all records of financial interests. In response to a question from a respondent, we note that this includes the information required under 42 CFR 50.605(b) and 45 CFR 94.5(b).

As we proposed in the NPRM, we have revised paragraph (c) to add that in any case in which the HHS determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug,

[36] Among other examples of HHS' oversight authority, we note that with regard to grants or cooperative agreements from HHS to Institution of higher education, hospitals, other non-profit organizations, and commercial organizations, HHS awarding agencies have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to its awards, to make audits, examinations, excerpts, transcripts and copies of such documents. See 45 CFR 74.53(4)(e).

medical device, or treatment has been designed, conducted, or reported by an Investigator with an FCOI that was not managed or reported by the Institution as required by the regulations, the Institution must not only require the Investigator involved to disclose the FCOI in each public presentation of the results of the research, but also to request an addendum to previously published presentations. One respondent suggested that this requirement may not achieve the desired aim, as Investigators could refrain from publicly presenting their results and publishers could refuse to publish the addendum or could publish it in an inconspicuous manner. We have implemented the proposed language from the NPRM because we believe the disclosure requirements as modified further the objective of the regulations to promote objectivity in research. Institutions are in the position to identify other actions that may be appropriate in such instances, depending on the specific case. We also note that the provision regarding public presentations has been in place since the 1995 regulations and that the revision merely expands the potential venues in which the FCOI must be disclosed, which is intended to strengthen transparency and accountability.

Other HHS Regulations That Apply (42 CFR 50.607)

As we proposed in the NPRM, we have revised the list of other HHS regulations that apply, to update changes that have been made in the CFR location or title of the references in this section since 1995. In the NPRM, we asked for comment on whether the regulations should be further revised to delete this section. Only one respondent suggested deleting this section; we have retained it as a useful point of reference.

IV. Institutional Conflict of Interest

Institutional conflict of interest is a subject that is not specifically addressed in the 1995 regulations for reasons stated in the 1995 final rule.[37] Because this is a topic of increasing interest to HHS as well as in the research community, we invited comment in the ANPRM on the possible revision of the regulations to address institutional conflict of interest. In particular, we asked (a) How ''institutional conflict of interest'' would be defined, and (b) what an institutional conflict of interest policy would address in order to assure the PHS of objectivity in research.[38] Consistent with the public comments that we received on this topic, we continue to believe that further careful consideration is necessary before PHS regulations could be formulated that would address the subject of institutional conflict of interest in the same comprehensive manner as the 1995 regulations address Investigator FCOI. Because we believe it is important to revise the 1995 regulations in a timely manner, specific revisions that we proposed in the NPRM were limited to the subject of Investigator FCOI.

In the NPRM, we asked for public comments on whether the regulations should be further revised to require Institutions, at a minimum, to adopt some type of policy on institutional conflict of interest, even if the scope and elements of the policy remain undefined in the regulations. We received a wide range of responses to this question, with some respondents stating that the regulations should include a basic provision requiring Institutions to have a policy on institutional conflict of interest without specifying the nature or scope of such a policy, and others suggesting that it would be premature to include such a provision in the regulations. Respondents in both groups urged HHS to engage the biomedical research community in discussions on the definition of institutional conflict of interest and how it should be addressed. One respondent suggested that the regulations should include a definition of institutional conflict of interest and specific provisions for policies addressing the issue.

We have considered all the comments and believe that requiring Institutions to have a policy on institutional conflict of interest without providing additional guidance as to the nature and scope of that policy would lead to confusion and inconsistencies across Institutions. We also believe that substantial additional information and deliberations are needed to formulate such guidance. Therefore, we have limited the final rule to Investigator conflict of interest. HHS will continue to consider the issue of institutional conflict of interest together with the biomedical research community, including the question of whether it is appropriate to propose specific regulations to address this subject.

V. Regulatory Impact Analyses (RIA)

The following is provided as public information.

Analysis of Impacts

We have examined the impacts of the amendments to 42 CFR part 50 subpart F and 45 CFR part 94 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 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule 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.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities. For the purposes of this analysis, small entities include small business concerns as defined by the SBA, usually businesses with fewer than 500 employees. Approximately 2,800 such organizations[39] apply to NIH for research funding annually, of which approximately 1,300 Institutions[40] are awarded funds. These regulations do not cover SBIR/STTR Program Phase I applications or awards. Therefore, the provisions of the regulations apply to the approximately 800 applicants to the SBIR/STTR Phase II program annually, of which approximately 300 Institutions receive funding. There is no change to the 1995 regulations that pertain specifically to applicant organizations. Rather, all changes to the regulations apply only to the approximately 300 small business concerns that receive Phase II SBIR/STTR PHS funding. The cost of implementing the amended regulations is an allowable cost that may be eligible for reimbursement as a Facilities and Administrative cost on PHS-supported grants, cooperative agreements and contracts. This could offset the cost burdens of implementation. Therefore, we do not believe that the changes to the regulations will have a significant economic impact on a substantial number of small entities. Our analysis is

[37] 60 FR 35813 (July 11, 1995).

[38] 74 FR 21612 (May 8, 2009).

[39] All applicant Institution numbers are based on the number of Institutions that applied for NIH funding in FY 2008.

[40] All applicant Institution numbers are based on the number of Institutions that applied for NIH funding in FY 2008.

further supported by the small number of FCOI reports submitted by small business concerns; for example, ten reports by small business concerns were submitted to NIH in FY 2009 and eleven in FY 2010. We also considered the impact of the requirement for Investigator training on small entities and have lowered the frequency of training required from every two years as proposed in the NPRM to every four yours. We believe this expanded timeframe will decrease the burden on Institutions, including small businesses. In addition, for the 1995 regulations, NIH developed training materials that Institutions can use which are available on the NIH Web site at *http://grants.nih.gov/grants/policy/coi/index.htm*. NIH will continue to update the training materials to ameliorate the burden on Institutions, including small businesses.

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 with base year of 1995) in any one year.'' The current inflation-adjusted statutory threshold is approximately $143.5 million.[41] The agency does not expect that the amendments to the regulations will result in any 1-year expenditure that would meet or exceed this amount.

Benefits

The amendments to the regulations will expand and add transparency to Investigator disclosure of Significant Financial Interests as well as enhance regulatory compliance and effective oversight of financial conflicts of interest. Specifically, the revisions will provide Institutions with additional information on Investigator financial interests so they can make a more informed evaluation of whether the disclosed SFI constitutes an FCOI with PHS-funded research. Also, the revisions will provide HHS with additional information on an identified FCOI to enable improved oversight. Finally, the revised regulations will provide interested stakeholders such as Congress and the public with information about Investigator financial interests that were identified as an FCOI with research funded by PHS, enabling increased transparency and accountability, with the goal of preserving and strengthening public trust in the output of the Federal investment in biomedical research.

Costs

Approximately 3000 Institutions that apply for PHS funding annually are subject to the regulations. As there are no changes to the regulations in the requirements for Institutions that are applying for PHS-funding, the amendments will affect the approximately 2000 organizations (including small businesses but excluding those that receive funding through the SBIR/STTR Phase I program) that are awarded PHS funding annually and, through the implementation of the regulations by the Institutions, to the estimated 38,000 Investigators (using the definition of Investigator in the regulations) participating in PHS-funded research that have SFIs. Many of the revisions expand requirements that already existed in the regulations. For instance, the number of Investigators who would be required to disclose their SFI is unchanged under the revised regulations as the definition of Investigator is not changed substantially. That said, however, Investigators would be required to disclose a larger number of financial interests due to the revisions to the SFI definition (*e.g.,* changing the de minimis from $10,000 to $5,000, and including income from a subset of non-profit Institutions). Also, Institutions are already required to report any identified FCOI to the PHS Awarding Component under the 1995 regulations. The revised regulations will require these reports to contain additional information. Several new requirements are included in the revised regulations, including the requirement for making information available upon request and the requirement for a retrospective review in those rare cases in which an Institution identifies noncompliance with the regulations. We discuss the rationale for each of these requirements in the preamble. In sum, the estimated burden for current implementation of the 1995 regulations is approximately 80% of the burden estimated for implementing the revised regulations.

The cost of implementing the amended regulations is an allowable cost that may be eligible for reimbursement as a Facilities and Administrative cost on PHS supported grants, cooperative agreements and contracts. This could offset some portion of the cost burdens of implementation for the affected Institutions and through their implementation of the regulations, to the Investigators. Nonetheless, we are including a description of the estimated costs of the amendments to the regulations for general information.

Section of 42 CFR part 50 subpart F or 45 CFR part 94	Number of respondents	Frequency of response (annual)	Estimated cost per response [42]	Estimated annual cost [43]
50.602 or 94.2	Total: approximately 3,000 applicant Institutions and 2,000 awardee Institutions (based on FY 2008 numbers) and an estimated 38,000 Investigators.	NA	NA.	
50.604 or 94.4				
(a)	3,000 [44]	1	$2,835	$8,505,000.
(b)	Institutions: 2,000 [45]	Institutions: 1	Institutions: $210 ..	Institutions: $420,000.
	Investigators: 38,000 [46]	Investigators 0.25 [47].	Investigators: $17.5 [48].	Investigators: $665,000.
			Total: $227.5.	Total: $1,085,000.
(c)(1)	500 [49]	1	$35.00	$17,500.
(c)(2)	Included in the cost estimate in 50.605/94.5(b)(3).	NA	NA.	
(d)	3,000 [50]	1	$35	$105,000.
(e)(1)	38,000 [51]	1	$140	$5,320,000.

[41] Bureau of Labor Statistics inflation calculator.

Section of 42 CFR part 50 subpart F or 45 CFR part 94	Number of respondents	Frequency of response (annual)	Estimated cost per response [42]	Estimated annual cost [43]
(e)(2)	38,000 [52]	1	$35.00	$1,330,000.
(e)(3)	950 [53]	1	$17.50	$8,313.
(f)	2,000 awardee Institutions	1	$35.00	$70,000.
(g)	Included in the cost estimate in 50.605/94.5(a)(1).	NA	NA.	
(h)	Included in the cost estimate in 50.605/94.5(b)(3).	NA	NA.	
(i)	2,000 awardee Institutions	1	$140	$280,000.
(j)	Included in the cost estimate in 50.604/94.4(a).	NA	NA.	
(k)	Included in the cost estimate in 50.604/94.4(a).	NA	NA.	
50.605 or 94.5				
(a)(1)	2,000 awardee Institutions [54]	1	$70 for review and $2,800 for developing management plan. Total: $2,870	$2,660,000 for review of all disclosures plus $2,660,000 for developing management plans of those identified as FCOI. Total: $5,320,000.
(a)(2)	950 [55] The cost is included in 50.605/94.5(b)(2) below.	NA	NA	NA.
(a)(3)	500 [56]	1	$105	$52,500.
(a)(3)(i)	50 [57]	1	$2,800	$140,000.
(a)(3)(ii)	50 [58]	1	$2,800	$140,000.
(a)(3)(iii)	50	1	$35	$1,750.
(a)(4)	950 [59]	1	$420	$399,000.
(a)(5)	2,000 [60]	1	$175	$350,000.
(b)(1)	Cost included in 50.605(b)(3)/94.5(b)(3) below.	NA	NA	NA.
(b)(2)	50 FCOI reports as in a(3)(ii) above [61] 5 mitigation reports [62]	1 for reporting FCOI and 1 for mitigation reports in the case bias was determined during the retrospective review.	$70 for FCOI report and $70 for mitigation report.	$70 × 50 = $3,500 for FCOI report and $70 × 5 = $350 for mitigation report. Total = $3,850.
(b)(3)	950 [63]	1	$70	$66,500.
(b)(4)	950 [64]	1	$35.00	$33,250.
50.606 or 94.6				
(a) [65]	20 [66]	1	$350	$7,000.
(c)	50 [67]	3 [68]	$31.50	$1,575.

Total annual cost: $23,236,238.

[42] Average burden hours × $35/hour based on recent NIH cost analyses.

[43] Number of respondents × estimated cost per response.

[44] Assumes 3,000 applicant Institutions and 80 hours per Institution for formulating and maintaining the policy. Also assumes that most Institutions already maintain a public Web site. Therefore, posting the policy to the Web site or providing it upon request is an incremental cost—estimated at 1 hour annually.

[45] Assumes that 2,000 awardee Institutions: 1. Inform Investigators about the policy on an annual basis by sending a notification to all Investigators = 1 hour and 2. Annually adapt NIH-provided training materials to institutional needs = 5 hours.

[46] Assumes 38,000 Investigators undergo 2 hours of training every four years. This refers to FCOI training only and is based on the use of training materials developed by the NIH and adapted to the Institution's needs.

[47] Once every 4 years.

[48] $70 every 4 years.

[49] An estimated maximum 25% of Institutions may have subrecipients in any one year—assuming 1 hour per Institution to incorporate the requirement of the regulations into an already existing written agreement. Includes burden on subrecipients.

[50] Assuming that 3,000 Institutions solicit disclosures on an annual basis by sending a notification to all Investigators.

[51] The financial disclosure burden estimate is based upon an Investigator figure of 38,000 with an average response time of 4 hours.

[52] Assuming that updating a disclosure takes less time/effort than creating a new one—1 hour.

[53] Assuming that only a small number of the 38,000 Investigators will have a new SFI in any year.

[54] Although an estimated 950 reports of Conflict of Interest are expected annually, the 2,000 responding Institutions must review all financial disclosures associated with PHS-funded awards to determine whether any conflicts of interest exist. Thus, the review burden of 76,000 hours is based upon estimates that it will take on the average 2 hours for an institutional official(s) to review each of 38,000 financial disclosures associated with PHS funded awards. The burden for developing a management plan for identified FCOI is estimated at 80 hours × 950 cases = 76,000 hours.

[55] Based on 50.604/94.4(e)(3) above.

[56] Assuming that this is a rare occurrence, based on prior experience.

[57] Assuming only a fraction of the newly identified SFIs will constitute FCOI.

[58] Assuming only a fraction of the newly identified SFIs will constitute FCOI.

[59] Based on previous assumption of 950 FCOI reports annually—estimated 12 hours annually, which may consist of 1 hour monthly or any other division the Institution deems appropriate.

[60] Since the information could be provided as a simple document or spreadsheet, providing the required information to multiple requestors or adding it to an existing Web site is an incremental cost. Updating annually does have an additional cost.

[61] The burden for subsequent reports of conflicts is significantly less, because we do not expect many additional reportable conflicts and there will be only a limited number of disclosures to review.

[62] After retrospective review—the cost of which is accounted for in a(3)(ii) above—we estimate that bias will be found in only a fraction of cases.
[63] Assumes 950 FCOI reports annually × 2 hours to prepare the report/complete an NIH-provided Web form.
[64] Assumes it takes less time to update a report than to create a new one—1 hour per update.
[65] This estimate includes inquiries by the PHS Awarding Component as described in 50.606.(b) and 94.6(b) and in accordance with 50.604(k) and 94.4(k).
[66] This burden was originally estimated in the 1995 Final Rule to be no more than 5 instances that the failure of an Investigator to comply with the Institution's conflict of interest policy has biased the design, conduct or reporting of the research. ''Objectivity in Research, Final Rule'' 60 Fed. Reg. 132 (July 11, 1995) pps. 35810–35819. This burden estimate, and others was increased in 2002 ''due to increased numbers of Institutions and Investigators.'' Although there has been an increase in the number of cases of noncompliance in the past few years, the number has not approached this estimate so we believe it is still reasonable.
[67] Based on 50.605/94.5(a)(3)(i)—of those only a fraction will relate to a project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment, but we are calculating the maximum estimated cost.
[68] Assuming an average of 3 publications annually.

Alternatives

The key alternative to the amendment of these regulations would be to continue to operate under the 1995 regulations. In the intervening years since the regulations were promulgated, Investigator collaborations have become more complex and public scrutiny has increased significantly creating an environment that would benefit from regulation with more effective means for management and oversight. If we continue to operate under the 1995 regulations, we would then lose the opportunity to implement enhanced Institutional management of Investigator FCOIs related to PHS-funded research, increased oversight by the PHS Awarding Component, and enhanced transparency. In addition, Congress has expressly directed and supported the ongoing regulation of FCOI (42 U.S.C. 216, 289b–1, 299c–4; Sec. 219, Tit. II, Div. D, Pub. L. 111–117, 123 Stat. 3034), and we agree that strengthening such regulation is necessary to enhance public trust and ensure the responsible stewardship of Federal funds.

Paperwork Reduction Act

This final rule contains requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35). Sections 50.604(a), 50.604(b), 50.604(c)(1), 50.604(d), 50.604(e)(1), 50.604(e)(2), 50.604(e)(3), 50.604(f), 50.605(a)(1), 50.605(a)(3), 50.605(a)(3)(i), 50.605(a)(3)(ii), 50.605(a)(4), 50.605(a)(5), 50.605(b)(1), 50.605(b)(2), 50.605(b)(3), 50.605(b)(4), 50.606(a), 50.606(c); 94.4(a), 94.4(b), 94.4(c)(1), 94.4(d), 94.4(e)(1), 94.4(e)(2), 94.4(e)(3), 94.4(f), 94.5(a)(1), 94.5(a)(3), 94.5(a)(3)(i), 94.5(a)(3)(ii), 94.5(a)(4), 94.5(a)(5), 94.5(b)(1), 94.5(b)(2), 94.5(b)(3), 94.5(b)(4), 94.6(a), and 94.6(c) contain reporting and information collection requirements that are subject to OMB approval under the Paperwork Reduction Act.

42 CFR 50.604(i), and 45 CFR 94.4(i) contain recordkeeping requirements that are subject to OMB review under the Paperwork Reduction Act. The title, description, and respondent description of the information collection and recordkeeping requirements contained in this revised rule have been submitted to OMB for review. Other organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should send their comments to: (1) Mikia Currie, Project Clearance Officer, National Institutes of Health, Rockledge Center 1, 6705 Rockledge Drive, Room 3509, Bethesda, MD 20817, telephone 301–594–7949 (not a toll-free number); and (2) the Office of Information and Regulatory Affairs, OMB, *OIRA_submission@omb.eop* or by fax to 202–395–6974, and mark ''Attention: Desk Officer for the National Institutes of Health, Department of Health and Human Services.'' After we obtain OMB approval, we will publish the OMB control number in the **Federal Register.**

Following are details of the estimated burden of implementing the revised regulations.

Section of 42 CFR part 50 subpart F or 45 CFR part 94	Number of respondents	Frequency of response (annual)	Average burden hours	Annual burden hours [69]
50.602 or 94.2	Total: approximately 3,000 applicant Institutions and 2,000 awardee Institutions (based on FY2008 numbers) and an estimated 38,000 Investigators.	NA	NA.	
50.604 or 94.4				
(a)	3,000 [70]	1	81 [71]	243,000.
(b)	Institutions: 2,000 [72]	Institutions: 1	Institutions: 6	Institutions: 12,000.
	Investigators: 38,000 [73]	Investigators 0.25 [74].	Investigators: 0.5 [75].	Investigators: 19,000.
				Total: 31,000.
(c)(1)	500 [76]	1	1	500.
(c)(2)	Included in the burden estimate in 50.605/94.5 (b)(3).	NA	NA	NA.
(d)	3,000 [77]	1	1	3,000.
(e)(1)	38,000 [78]	1	4	152,000.
(e)(2)	38,000 [79]	1	1	38,000.
(e)(3)	950 [80]	1	0.5	475.
(f)	2,000 awardee Institutions	1	1	2,000.
(g)	Included in the burden estimate in 50.605/94.5 (a)(1).	NA	NA	NA.
(h)	Included in the burden estimate in 50.605/94.5 (b)(3).	NA	NA	NA.
(i)	2,000 awardee Institutions	1	4	8,000.
(j)	Included in the burden estimate in 50.604/94.4 (a).	NA	NA	NA.

Section of 42 CFR part 50 subpart F or 45 CFR part 94	Number of respondents	Frequency of response (annual)	Average burden hours	Annual burden hours [69]
(k)	Included in the burden estimate in 50.604/94.4 (a).	NA	NA	NA.
50.605 or 94.5				
(a)(1)	2,000 awardee Institutions [81]	1	2 hours per disclosure to review plus 80 hours per identified FCOI to develop management plan.	76,000 for reviewing disclosures from 38,000 Investigators plus 76,000 for developing management plans for 950 identified FCOIs = 152,000.
(a)(2)	950 [82] The burden is included in 50.605/94.5 (b)(2) below.	NA	NA	NA.
(a)(3)	500 [83]	1	3	1,500.
(a)(3)(i)	50 [84]	1	80	4,000.
(a)(3)(ii)	50 [85]	1	80	4,000.
(a)(3)(iii)	50	1	1	50.
(a)(4)	950 [86]	1	12	11,400.
(a)(5)	2,000 [87]	1	5	10,000.
(b)(1)	Included in 50.605(b)(3)/94.5 (b)(3) below.	NA	NA	NA.
(b)(2)	50 FCOI reports as in a(3)(ii) above [88] 5 mitigation reports [89]	1 for reporting FCOI and 1 for mitigation reports in the case bias was determined during the retrospective review.	2 for FCOI report and 2 for mitigation report.	50×2 = 100 for FCOI report and 5×2=10 for mitigation report. Total =110.
(b)(3)	950 [90]	1	2	1,900.
(b)(4)	950 [91]	1	1	950.
50.606 or 94.6				
(a) [92]	20 [93]	1	10	200.
(c)	50 [94]	3 [95]	0.3	45.

Total burden hours: 664,130.

[69] Number of respondents × average burden hours × frequency of response.

[70] Assumes 3,000 applicant Institutions and 80 hours per Institution for formulating and maintaining the policy. Also assumes that most Institutions already maintain a public Web site. Therefore, posting the policy to the Web site or providing it upon request is an incremental burden—estimated at 1 hour annually.

[71] 80 h for policy formulation and maintenance; 1h for posting the policy or providing it upon request.

[72] Assumes that 2,000 awardee Institutions: 1. inform Investigators about the policy on an annual basis by sending a notification to all Investigators = 1 hour and 2. annually adapt NIH-provided training materials to institutional needs = 5 hours.

[73] Assumes 38,000 Investigators undergo 2 hours of training every four years. This refers to FCOI training only and is based on the use of training materials developed by the NIH and adapted to the Institution's needs.

[74] Once every 4 years.

[75] 2 hours every 4 years.

[76] An estimated maximum 25% of Institutions may have subrecipients in any one year—assuming 1 hour per Institution to incorporate the requirement of the regulations into an already existing written agreement. Includes burden on subrecipients.

[77] Assuming that 3,000 Institutions solicit disclosures on an annual basis by sending a notification to all Investigators.

[78] The financial disclosure burden estimate is based upon an Investigator figure of 38,000 with an average response time of 4 hours.

[79] Assuming that updating a disclosure takes less time/effort than creating a new one—1 hour.

[80] Assuming that only a small number of the 38,000 Investigators will have a new SFI in any year.

[81] Although an estimated 950 reports of Conflict of Interest are expected annually, the 2,000 responding Institutions must review all financial disclosures associated with PHS-funded awards to determine whether any conflicts of interest exist. Thus, the review burden of 76,000 hours is based upon estimates that it will take on the average 2 hours for an institutional official(s) to review each of 38,000 financial disclosures associated with PHS funded awards. The burden for developing a management plan for identified FCOI is estimated at 80 hours × 950 cases = 76,000 hours.

[82] Based on 50.604/94.4 (e)(3) above.

[83] Assuming that this is a rare occurrence based on prior experience.

[84] Assuming only a fraction of the newly identified SFIs will constitute FCOI.

[85] Assuming only a fraction of the newly identified SFIs will constitute FCOI.

[86] Based on previous assumption of 950 FCOI reports annually—estimated 12 hours annually, which may consist of 1 hour monthly or any other division the Institution deems appropriate.

[87] Since the information could be provided as a simple document or spreadsheet, providing the required information to multiple requestors or adding it to an existing Web site is an incremental burden. Updating annually does have an additional burden.

[88] The burden for subsequent reports of conflicts is significantly less, because we do not expect many additional reportable conflicts and there will be only a limited number of disclosures to review.

[89] After retrospective review—the burden of which is accounted for in a(3)(ii) above—we estimate that bias will be found in only a fraction of cases.

[90] Assumes 950 FCOI reports annually × 2 hours to prepare the report/complete an NIH-provided Web form.

[91] Assumes it takes less time to update a report than to create a new one—1 hour per update.

[92] This estimate includes inquiries by the PHS Awarding Component as described in 50.606.(b) and 94.6(b) and in accordance with 50.604(k) and 94.4(k).

[93] This burden was originally estimated in the 1995 Final Rule to be no more than 5 instances that the failure of an Investigator to comply with the Institution's conflict of interest policy has biased the design, conduct or reporting of the research. ''Objectivity in Research, Final Rule'' 60 FR 132 (July 11, 1995) pps. 35810–35819. This burden estimate, and others was increased in 2002 ''due to increased numbers of Institutions and Investigators.'' Although there has been an increase in the number of cases of noncompliance in the past few years, the number has not approached this estimate so we believe it is still reasonable.

[94] Number based on 50.605/94.5 (a)(3)(i)—of those only a fraction will relate to a project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment, but we are calculating the maximum estimated burden.

[95] Assuming an average of 3 publications annually.

Environmental Impact

We have determined 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.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance numbered programs applicable to this revised rule are:

93.113—Environmental Health
93.121—Oral Diseases and Disorders Research
93.142—NIEHS Hazardous Waste Worker Health and Safety Training
93.143—NIEHS Superfund Hazardous Substances—Basic Research and Education
93.172—Human Genome Research
93.173—Research Related to Deafness and Communication Disorders
93.187—Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds
93.213—Research and Training in Complementary and Alternative Medicine
93.233—National Center on Sleep Disorders Research
93.242—Mental Health Research Grants
93.271—Alcohol Research Career Development Awards for Scientists and Clinicians
93.272—Alcohol National Research Service Awards for Research Training
93.273—Alcohol Research Programs
93.279—Drug Abuse and Addiction Research Programs
93.281—Mental Health Research Career/Scientist Development Awards
93.282—Mental Health National Research Service Awards for Research Training
93.286—Discovery and Applied Research for Technological Innovations to Improve Human Health
93.307—Minority Health and Health Disparities Research
93.310—Trans-NIH Research Support
93.361—Nursing Research
93.389—National Center for Research Resources
93.393—Cancer Cause and Prevention Research
93.394—Cancer Detection and Diagnosis Research
93.395—Cancer Treatment Research
93.396—Cancer Biology Research
93.397—Cancer Centers Support Grants
93.398—Cancer Research Manpower
93.399—Cancer Control
93.701—Trans-NIH Recovery Act Research Support RECOVERY
93.702—National Center for Research Resources, Recovery Act Construction Support RECOVERY
93.837—Cardiovascular Diseases Research
93.838—Lung Diseases Research
93.839—Blood Diseases and Resources Research
93.846—Arthritis, Musculoskeletal and Skin Diseases Research
93.847—Diabetes, Digestive, and Kidney Diseases Extramural Research
93.853—Extramural Research Programs in the Neurosciences and Neurological Disorders
93.855—Allergy, Immunology and Transplantation Research
93.856—Microbiology and Infectious Diseases Research
93.859—Biomedical Research and Research Training
93.865—Child Health and Human Development Extramural Research
93.866—Aging Research
93.867—Vision Research
93.879—Medical Library Assistance
93.891—Alcohol Research Center Grants
93.989—International Research and Research Training

List of Subjects in 42 CFR Part 50 and 45 CFR Part 94

Colleges and universities, Conflict of interests, Contracts, Financial disclosure, Grants—health, Grants programs, Non-profit organizations, Research, Scientists, Small businesses.

For the reasons set forth in the preamble, HHS is amending 42 CFR chapter I, subchapter D, part 50, and 45 CFR subtitle A, subchapter A, part 94 as follows:

TITLE 42—PUBLIC HEALTH

PART 50—POLICIES OF GENERAL APPLICABILITY

■ 1. Revise Subpart F to read as follows:

Subpart F—Promoting Objectivity in Research

Sec.
50.601 Purpose.
50.602 Applicability.
50.603 Definitions.
50.604 Responsibilities of Institutions regarding Investigator financial conflicts of interest.
50.605 Management and reporting of financial conflicts of interest.
50.606 Remedies.
50.607 Other HHS regulations that apply.

Subpart F—Promoting Objectivity in Research

Authority: 42 U.S.C. 216, 289b–1, 299c–4; Sec. 219, Tit. II, Div. D, Pub. L. 111–117, 123 Stat. 3034.

§ 50.601 Purpose.

This subpart promotes objectivity in research by establishing standards that provide a reasonable expectation that the design, conduct, and reporting of research funded under Public Health Service (PHS) grants or cooperative agreements will be free from bias resulting from Investigator financial conflicts of interest.

§ 50.602 Applicability.

This subpart is applicable to each Institution that is applying for, or that receives, PHS research funding by means of a grant or cooperative agreement and, through the implementation of this subpart by the Institution, to each Investigator who is planning to participate in, or is participating in, such research; provided, however, that this subpart does not apply to SBIR Program Phase I applications. In those few cases where an individual, rather than an Institution, is applying for, or receives, PHS research funding, PHS Awarding Components will make case-by-case determinations on the steps to be taken, consistent with this subpart, to provide a reasonable expectation that the design, conduct, and reporting of the research will be free from bias resulting from a financial conflict of interest of the individual.

§ 50.603 Definitions.

As used in this subpart:

Disclosure of significant financial interests means an Investigator's disclosure of significant financial interests to an Institution.

Financial conflict of interest (FCOI) means a significant financial interest that could directly and significantly affect the design, conduct, or reporting of PHS-funded research.

FCOI report means an Institution's report of a financial conflict of interest to a PHS Awarding Component.

Financial interest means anything of monetary value, whether or not the value is readily ascertainable.

HHS means the United States Department of Health and Human Services, and any components of the Department to which the authority involved may be delegated.

Institution means any domestic or foreign, public or private, entity or organization (excluding a Federal agency) that is applying for, or that receives, PHS research funding.

Institutional responsibilities means an Investigator's professional responsibilities on behalf of the Institution, and as defined by the Institution in its policy on financial conflicts of interest, which may include for example: activities such as research, research consultation, teaching, professional practice, institutional committee memberships, and service on panels such as Institutional Review Boards or Data and Safety Monitoring Boards.

Investigator means the project director or principal Investigator and any other person, regardless of title or position, who is responsible for the design, conduct, or reporting of research funded by the PHS, or proposed for such funding, which may include, for example, collaborators or consultants.

Manage means taking action to address a financial conflict of interest, which can include reducing or eliminating the financial conflict of interest, to ensure, to the extent possible, that the design, conduct, and reporting of research will be free from bias.

PD/PI means a project director or principal Investigator of a PHS-funded research project; the PD/PI is included in the definitions of senior/key personnel and Investigator under this subpart.

PHS means the Public Health Service of the U.S. Department of Health and Human Services, and any components of the PHS to which the authority involved may be delegated, including the National Institutes of Health (NIH).

PHS Awarding Component means the organizational unit of the PHS that funds the research that is subject to this subpart.

Public Health Service Act or PHS Act means the statute codified at 42 U.S.C. 201 *et seq.*

Research means a systematic investigation, study or experiment designed to develop or contribute to generalizable knowledge relating broadly to public health, including behavioral and social-sciences research. The term encompasses basic and applied research (*e.g.,* a published article, book or book chapter) and product development (*e.g.,* a diagnostic test or drug). As used in this subpart, the term includes any such activity for which research funding is available from a PHS Awarding Component through a grant or cooperative agreement, whether authorized under the PHS Act or other statutory authority, such as a research grant, career development award, center grant, individual fellowship award, infrastructure award, institutional training grant, program project, or research resources award.

Senior/key personnel means the PD/PI and any other person identified as senior/key personnel by the Institution in the grant application, progress report, or any other report submitted to the PHS by the Institution under this subpart.

Significant financial interest means:

(1) A financial interest consisting of one or more of the following interests of the Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities:

(i) With regard to any publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds $5,000. For purposes of this definition, remuneration includes salary and any payment for services not otherwise identified as salary (*e.g.,* consulting fees, honoraria, paid authorship); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value;

(ii) With regard to any non-publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure, when aggregated, exceeds $5,000, or when the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (*e.g.,* stock, stock option, or other ownership interest); or

(iii) Intellectual property rights and interests (*e.g.,* patents, copyrights), upon receipt of income related to such rights and interests.

(2) Investigators also must disclose the occurrence of any reimbursed or sponsored travel (*i.e.,* that which is paid on behalf of the Investigator and not reimbursed to the Investigator so that the exact monetary value may not be readily available), related to their institutional responsibilities; provided, however, that this disclosure requirement does not apply to travel that is reimbursed or sponsored by a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education. The Institution's FCOI policy will specify the details of this disclosure, which will include, at a minimum, the purpose of the trip, the identity of the sponsor/organizer, the destination, and the duration. In accordance with the Institution's FCOI policy, the institutional official(s) will determine if further information is needed, including a determination or disclosure of monetary value, in order to determine whether the travel constitutes an FCOI with the PHS-funded research.

(3) The term *significant financial interest* does not include the following types of financial interests: salary, royalties, or other remuneration paid by the Institution to the Investigator if the Investigator is currently employed or otherwise appointed by the Institution, including intellectual property rights assigned to the Institution and agreements to share in royalties related to such rights; any ownership interest in the Institution held by the Investigator, if the Institution is a commercial or for-profit organization; income from investment vehicles, such as mutual funds and retirement accounts, as long as the Investigator does not directly control the investment decisions made in these vehicles; income from seminars, lectures, or teaching engagements sponsored by a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education; or income from service on advisory committees or review panels for a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education.

Small Business Innovation Research (SBIR) Program means the extramural research program for small businesses that is established by the Awarding Components of the Public Health Service and certain other Federal agencies under Public Law 97–219, the Small Business Innovation Development Act, as amended. For purposes of this subpart, the term SBIR Program also includes the Small Business Technology Transfer (STTR) Program, which was established by Public Law 102–564.

§ 50.604 Responsibilities of Institutions regarding Investigator financial conflicts of interest.

Each Institution shall:

(a) Maintain an up-to-date, written, enforced policy on financial conflicts of interest that complies with this subpart, and make such policy available via a publicly accessible Web site. If the Institution does not have any current presence on a publicly accessible Web site (and only in those cases), the Institution shall make its written policy available to any requestor within five business days of a request. If, however, the Institution acquires a presence on a publicly accessible Web site during the time of the PHS award, the requirement to post the information on that Web site will apply within 30 calendar days. If an Institution maintains a policy on financial conflicts of interest that includes standards that are more stringent than this subpart (*e.g.,* that require a more extensive disclosure of financial interests), the Institution shall adhere to its policy and shall provide FCOI reports regarding identified financial conflicts of interest to the PHS Awarding Component in accordance with the Institution's own standards and within the timeframe prescribed by this subpart.

(b) Inform each Investigator of the Institution's policy on financial conflicts of interest, the Investigator's responsibilities regarding disclosure of significant financial interests, and of these regulations, and require each Investigator to complete training regarding the same prior to engaging in research related to any PHS-funded grant and at least every four years, and immediately when any of the following circumstances apply:

(1) The Institution revises its financial conflict of interest policies or procedures in any manner that affects the requirements of Investigators;

(2) An Investigator is new to an Institution; or

(3) An Institution finds that an Investigator is not in compliance with the Institution's financial conflict of interest policy or management plan.

(c) If the Institution carries out the PHS-funded research through a subrecipient (*e.g.,* subcontractors or consortium members), the Institution (awardee Institution) must take reasonable steps to ensure that any subrecipient Investigator complies with this subpart by:

(1) Incorporating as part of a written agreement with the subrecipient terms that establish whether the financial conflicts of interest policy of the awardee Institution or that of the subrecipient will apply to the subrecipient's Investigators.

(i) If the subrecipient's Investigators must comply with the subrecipient's financial conflicts of interest policy, the subrecipient shall certify as part of the agreement referenced above that its policy complies with this subpart. If the subrecipient cannot provide such certification, the agreement shall state that subrecipient Investigators are subject to the financial conflicts of interest policy of the awardee Institution for disclosing significant financial interests that are directly related to the subrecipient's work for the awardee Institution;

(ii) Additionally, if the subrecipient's Investigators must comply with the subrecipient's financial conflicts of interest policy, the agreement referenced above shall specify time period(s) for the subrecipient to report all identified financial conflicts of interest to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to provide timely FCOI reports, as necessary, to the PHS as required by this subpart;

(iii) Alternatively, if the subrecipient's Investigators must comply with the awardee Institution's financial conflicts of interest policy, the agreement referenced above shall specify time period(s) for the subrecipient to submit all Investigator disclosures of significant financial interests to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to comply timely with its review, management, and reporting obligations under this subpart.

(2) Providing FCOI reports to the PHS Awarding Component regarding all financial conflicts of interest of all subrecipient Investigators consistent with this subpart, *i.e.,* prior to the expenditure of funds and within 60 days of any subsequently identified FCOI.

(d) Designate an institutional official(s) to solicit and review disclosures of significant financial interests from each Investigator who is planning to participate in, or is participating in, the PHS-funded research.

(e)(1) Require that each Investigator who is planning to participate in the PHS-funded research disclose to the Institution's designated official(s) the Investigator's significant financial interests (and those of the Investigator's spouse and dependent children) no later than the time of application for PHS-funded research.

(2) Require each Investigator who is participating in the PHS-funded research to submit an updated disclosure of significant financial interests at least annually, in accordance with the specific time period prescribed by the Institution, during the period of the award. Such disclosure shall include any information that was not disclosed initially to the Institution pursuant to paragraph (e)(1) of this section, or in a subsequent disclosure of significant financial interests (*e.g.,* any financial conflict of interest identified on a PHS-funded project that was transferred from another Institution), and shall include updated information regarding any previously disclosed significant financial interest (*e.g.,* the updated value of a previously disclosed equity interest).

(3) Require each Investigator who is participating in the PHS-funded research to submit an updated disclosure of significant financial interests within thirty days of discovering or acquiring (*e.g.,* through purchase, marriage, or inheritance) a new significant financial interest.

(f) Provide guidelines consistent with this subpart for the designated institutional official(s) to determine whether an Investigator's significant financial interest is related to PHS-funded research and, if so related, whether the significant financial interest is a financial conflict of interest. An Investigator's significant financial interest is related to PHS-funded research when the Institution, through its designated official(s), reasonably determines that the significant financial interest: could be affected by the PHS-funded research; or is in an entity whose financial interest could be affected by the research. The Institution may involve the Investigator in the designated official(s)'s determination of whether a significant financial interest is related to the PHS-funded research. A financial conflict of interest exists when the Institution, through its designated official(s), reasonably determines that the significant financial interest could directly and significantly affect the design, conduct, or reporting of the PHS-funded research.

(g) Take such actions as necessary to manage financial conflicts of interest, including any financial conflicts of a subrecipient Investigator pursuant to paragraph (c) of this section. Management of an identified financial conflict of interest requires development and implementation of a management plan and, if necessary, a retrospective review and a mitigation report pursuant to § 50.605(a).

(h) Provide initial and ongoing FCOI reports to the PHS as required pursuant to § 50.605(b).

(i) Maintain records relating to all Investigator disclosures of financial interests and the Institution's review of, and response to, such disclosures (whether or not a disclosure resulted in the Institution's determination of a financial conflict of interest) and all actions under the Institution's policy or retrospective review, if applicable, for at least three years from the date the final expenditures report is submitted to the PHS or, where applicable, from other dates specified in 45 CFR 74.53(b) and 92.42 (b) for different situations.

(j) Establish adequate enforcement mechanisms and provide for employee sanctions or other administrative actions to ensure Investigator compliance as appropriate.

(k) Certify, in each application for funding to which this subpart applies, that the Institution:

(1) Has in effect at that Institution an up-to-date, written, and enforced administrative process to identify and manage financial conflicts of interest with respect to all research projects for which funding is sought or received from the PHS;

(2) Shall promote and enforce Investigator compliance with this subpart's requirements including those pertaining to disclosure of significant financial interests;

(3) Shall manage financial conflicts of interest and provide initial and ongoing FCOI reports to the PHS Awarding Component consistent with this subpart;

(4) Agrees to make information available, promptly upon request, to the HHS relating to any Investigator disclosure of financial interests and the Institution's review of, and response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of a financial conflict of interest; and

(5) Shall fully comply with the requirements of this subpart.

§ 50.605 Management and reporting of financial conflicts of interest.

(a) Management of financial conflicts of interest.

(1) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the designated official(s) of an Institution shall, consistent with § 50.604(f): review all Investigator disclosures of significant financial interests; determine whether any significant financial interests relate to PHS-funded research; determine whether a financial conflict of interest exists; and, if so, develop and implement a management plan that shall specify the actions that have been, and shall be, taken to manage such financial conflict of interest. Examples of conditions or restrictions that might be imposed to manage a financial conflict of interest include, but are not limited to:

(i) Public disclosure of financial conflicts of interest (*e.g.*, when presenting or publishing the research);

(ii) For research projects involving human subjects research, disclosure of financial conflicts of interest directly to participants;

(iii) Appointment of an independent monitor capable of taking measures to protect the design, conduct, and reporting of the research against bias resulting from the financial conflict of interest;

(iv) Modification of the research plan;

(v) Change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the research;

(vi) Reduction or elimination of the financial interest (*e.g.*, sale of an equity interest); or

(vii) Severance of relationships that create financial conflicts.

(2) Whenever, in the course of an ongoing PHS-funded research project, an Investigator who is new to participating in the research project discloses a significant financial interest or an existing Investigator discloses a new significant financial interest to the Institution, the designated official(s) of the Institution shall, within sixty days: review the disclosure of the significant financial interest; determine whether it is related to PHS-funded research; determine whether a financial conflict of interest exists; and, if so, implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such financial conflict of interest. Depending on the nature of the significant financial interest, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date of disclosure and the completion of the Institution's review.

(3) Whenever an Institution identifies a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Institution during an ongoing PHS-funded research project (*e.g.*, was not timely reviewed or reported by a subrecipient), the designated official(s) shall, within sixty days: review the significant financial interest; determine whether it is related to PHS-funded research; determine whether a financial conflict of interest exists; and, if so:

(i) Implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such financial conflict of interest going forward;

(ii)(A) In addition, whenever a financial conflict of interest is not identified or managed in a timely manner including failure by the Investigator to disclose a significant financial interest that is determined by the Institution to constitute a financial conflict of interest; failure by the Institution to review or manage such a financial conflict of interest; or failure by the Investigator to comply with a financial conflict of interest management plan, the Institution shall, within 120 days of the Institution's determination of noncompliance, complete a retrospective review of the Investigator's activities and the PHS-funded research project to determine whether any PHS-funded research, or portion thereof, conducted during the time period of the noncompliance, was biased in the design, conduct, or reporting of such research.

(B) The Institution is required to document the retrospective review; such documentation shall include, but not necessarily be limited to, all of the following key elements:

(*1*) Project number;

(*2*) Project title;

(3) PD/PI or contact PD/PI if a multiple PD/PI model is used;

(4) Name of the Investigator with the FCOI;

(5) Name of the entity with which the Investigator has a financial conflict of interest;

(6) Reason(s) for the retrospective review;

(7) Detailed methodology used for the retrospective review (*e.g.*, methodology of the review process, composition of the review panel, documents reviewed);

(8) Findings of the review; and

(9) Conclusions of the review.

(iii) Based on the results of the retrospective review, if appropriate, the Institution shall update the previously submitted FCOI report, specifying the actions that will be taken to manage the financial conflict of interest going forward. If bias is found, the Institution is required to notify the PHS Awarding Component promptly and submit a mitigation report to the PHS Awarding Component. The mitigation report must include, at a minimum, the key elements documented in the retrospective review above and a description of the impact of the bias on the research project and the Institution's plan of action or actions taken to eliminate or mitigate the effect of the bias (*e.g.*, impact on the research

project; extent of harm done, including any qualitative and quantitative data to support any actual or future harm; analysis of whether the research project is salvageable). Thereafter, the Institution will submit FCOI reports annually, as specified elsewhere in this subpart. Depending on the nature of the financial conflict of interest, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date that the financial conflict of interest or the Investigator's noncompliance is determined and the completion of the Institution's retrospective review.

(4) Whenever an Institution implements a management plan pursuant to this subpart, the Institution shall monitor Investigator compliance with the management plan on an ongoing basis until the completion of the PHS-funded research project.

(5)(i) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall ensure public accessibility, via a publicly accessible Web site or written response to any requestor within five business days of a request, of information concerning any significant financial interest disclosed to the Institution that meets the following three criteria:

(A) The significant financial interest was disclosed and is still held by the senior/key personnel as defined by this subpart;

(B) The Institution determines that the significant financial interest is related to the PHS-funded research; and

(C) The Institution determines that the significant financial interest is a financial conflict of interest.

(ii) The information that the Institution makes available via a publicly accessible Web site or written response to any requestor within five business days of a request, shall include, at a minimum, the following: the Investigator's name; the Investigator's title and role with respect to the research project; the name of the entity in which the significant financial interest is held; the nature of the significant financial interest; and the approximate dollar value of the significant financial interest (dollar ranges are permissible: $0–$4,999; $5,000–$9,999; $10,000–$19,999; amounts between $20,000–$100,000 by increments of $20,000; amounts above $100,000 by increments of $50,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value.

(iii) If the Institution uses a publicly accessible Web site for the purposes of this subsection, the information that the Institution posts shall be updated at least annually. In addition, the Institution shall update the Web site within sixty days of the Institution's receipt or identification of information concerning any additional significant financial interest of the senior/key personnel for the PHS-funded research project that was not previously disclosed, or upon the disclosure of a significant financial interest of senior/key personnel new to the PHS-funded research project, if the Institution determines that the significant financial interest is related to the PHS-funded research and is a financial conflict of interest. The Web site shall note that the information provided is current as of the date listed and is subject to updates, on at least an annual basis and within 60 days of the Institution's identification of a new financial conflict of interest. If the Institution responds to written requests for the purposes of this subsection, the Institution will note in its written response that the information provided is current as of the date of the correspondence and is subject to updates, on at least an annual basis and within 60 days of the Institution's identification of a new financial conflict of interest, which should be requested subsequently by the requestor.

(iv) Information concerning the significant financial interests of an individual subject to paragraph (a)(5) of this section shall remain available, for responses to written requests or for posting via the Institution's publicly accessible Web site for at least three years from the date that the information was most recently updated.

(6) In addition to the types of financial conflicts of interest as defined in this subpart that must be managed pursuant to this section, an Institution may require the management of other financial conflicts of interest in its policy on financial conflicts of interest, as the Institution deems appropriate.

(b) Reporting of financial conflicts of interest.

(1) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall provide to the PHS Awarding Component an FCOI report regarding any Investigator's significant financial interest found by the Institution to be conflicting and ensure that the Institution has implemented a management plan in accordance with this subpart. In cases in which the Institution identifies a financial conflict of interest and eliminates it prior to the expenditure of PHS-awarded funds, the Institution shall not submit an FCOI report to the PHS Awarding Component.

(2) For any significant financial interest that the Institution identifies as conflicting subsequent to the Institution's initial FCOI report during an ongoing PHS-funded research project (*e.g.*, upon the participation of an Investigator who is new to the research project), the Institution shall provide to the PHS Awarding Component, within sixty days, an FCOI report regarding the financial conflict of interest and ensure that the Institution has implemented a management plan in accordance with this subpart. Pursuant to paragraph (a)(3)(ii) of this section, where such FCOI report involves a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed or managed by the Institution (*e.g.,* was not timely reviewed or reported by a subrecipient), the Institution also is required to complete a retrospective review to determine whether any PHS-funded research, or portion thereof, conducted prior to the identification and management of the financial conflict of interest was biased in the design, conduct, or reporting of such research. Additionally, pursuant to paragraph (a)(3)(iii) of this section, if bias is found, the Institution is required to notify the PHS Awarding Component promptly and submit a mitigation report to the PHS Awarding Component.

(3) Any FCOI report required under paragraphs (b)(1) or (b)(2) of this section shall include sufficient information to enable the PHS Awarding Component to understand the nature and extent of the financial conflict, and to assess the appropriateness of the Institution's management plan. Elements of the FCOI report shall include, but are not necessarily limited to the following:

(i) Project number;

(ii) PD/PI or Contact PD/PI if a multiple PD/PI model is used;

(iii) Name of the Investigator with the financial conflict of interest;

(iv) Name of the entity with which the Investigator has a financial conflict of interest;

(v) Nature of the financial interest (*e.g.,* equity, consulting fee, travel reimbursement, honorarium);

(vi) Value of the financial interest (dollar ranges are permissible: $0–$4,999; $5,000–$9,999; $10,000–$19,999; amounts between $20,000–$100,000 by increments of $20,000; amounts above $100,000 by increments of $50,000), or a statement that the interest is one whose value cannot be readily determined through reference to

public prices or other reasonable measures of fair market value;

(vii) A description of how the financial interest relates to the PHS-funded research and the basis for the Institution's determination that the financial interest conflicts with such research; and

(viii) A description of the key elements of the Institution's management plan, including:

(A) Role and principal duties of the conflicted Investigator in the research project;

(B) Conditions of the management plan;

(C) How the management plan is designed to safeguard objectivity in the research project;

(D) Confirmation of the Investigator's agreement to the management plan;

(E) How the management plan will be monitored to ensure Investigator compliance; and

(F) Other information as needed.

(4) For any financial conflict of interest previously reported by the Institution with regard to an ongoing PHS-funded research project, the Institution shall provide to the PHS Awarding Component an annual FCOI report that addresses the status of the financial conflict of interest and any changes to the management plan for the duration of the PHS-funded research project. The annual FCOI report shall specify whether the financial conflict is still being managed or explain why the financial conflict of interest no longer exists. The Institution shall provide annual FCOI reports to the PHS Awarding Component for the duration of the project period (including extensions with or without funds) in the time and manner specified by the PHS Awarding Component.

(5) In addition to the types of financial conflicts of interest as defined in this subpart that must be reported pursuant to this section, an Institution may require the reporting of other financial conflicts of interest in its policy on financial conflicts of interest, as the Institution deems appropriate.

§ 50.606 Remedies.

(a) If the failure of an Investigator to comply with an Institution's financial conflicts of interest policy or a financial conflict of interest management plan appears to have biased the design, conduct, or reporting of the PHS-funded research, the Institution shall promptly notify the PHS Awarding Component of the corrective action taken or to be taken. The PHS Awarding Component will consider the situation and, as necessary, take appropriate action, or refer the matter to the Institution for further action, which may include directions to the Institution on how to maintain appropriate objectivity in the PHS-funded research project. PHS may, for example, require Institutions employing such an Investigator to enforce any applicable corrective actions prior to a PHS award or when the transfer of a PHS grant(s) involves such an Investigator.

(b) The PHS Awarding Component and/or HHS may inquire at any time before, during, or after award into any Investigator disclosure of financial interests and the Institution's review (including any retrospective review) of, and response to, such disclosure, regardless of whether the disclosure resulted in the Institution's determination of a financial conflict of interest. An Institution is required to submit, or permit on site review of, all records pertinent to compliance with this subpart. To the extent permitted by law, HHS will maintain the confidentiality of all records of financial interests. On the basis of its review of records or other information that may be available, the PHS Awarding Component may decide that a particular financial conflict of interest will bias the objectivity of the PHS-funded research to such an extent that further corrective action is needed or that the Institution has not managed the financial conflict of interest in accordance with this subpart. The PHS Awarding Component may determine that imposition of special award conditions under 45 CFR 74.14 and 92.12, or suspension of funding or other enforcement action under 45 CFR 74.62 and 92.43, is necessary until the matter is resolved.

(c) In any case in which the HHS determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment has been designed, conducted, or reported by an Investigator with a financial conflict of interest that was not managed or reported by the Institution as required by this subpart, the Institution shall require the Investigator involved to disclose the financial conflict of interest in each public presentation of the results of the research and to request an addendum to previously published presentations.

§ 50.607 Other HHS regulations that apply.

Several other regulations and policies apply to this subpart. They include, but are not necessarily limited to:

2 CFR part 376—Nonprocurement debarment and suspension (HHS)

42 CFR part 50, subpart D—Public Health Service grant appeals procedure

45 CFR part 16—Procedures of the Departmental Grant Appeals Board

45 CFR part 74—Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations

45 CFR part 79—Program fraud civil remedies

45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State, local, and tribal governments

TITLE 45—PUBLIC WELFARE

■ 2. Revise Part 94 to read as follows:

PART 94—RESPONSIBLE PROSPECTIVE CONTRACTORS

Sec.

Authority: 42 U.S.C. 216, 289b–1, 299c–4.

§ 94.1 Purpose.

This part promotes objectivity in research by establishing standards that provide a reasonable expectation that the design, conduct, and reporting of research performed under PHS contracts will be free from bias resulting from Investigator financial conflicts of interest.

§ 94.2 Applicability.

This part is applicable to each Institution that submits a proposal, or that receives, Public Health Service (PHS) research funding by means of a contract and, through the implementation of this part by the Institution, to each Investigator who is planning to participate in, or is participating in such research; provided, however, that this part does not apply to SBIR Program Phase I applications.

§ 94.3 Definitions.

As used in this part:

Contractor means an entity that provides property or services under contract for the direct benefit or use of the Federal Government.

Disclosure of significant financial interests means an Investigator's disclosure of significant financial interests to an Institution.

Financial conflict of interest (FCOI) means a significant financial interest that could directly and significantly

affect the design, conduct, or reporting of PHS-funded research.

FCOI report means an Institution's report of a financial conflict of interest to a PHS Awarding Component.

Financial interest means anything of monetary value, whether or not the value is readily ascertainable.

HHS means the United States Department of Health and Human Services, and any components of the Department to which the authority involved may be delegated.

Institution means any domestic or foreign, public or private, entity or organization (excluding a Federal agency) that submits a proposal, or that receives, PHS research funding.

Institutional responsibilities means an Investigator's professional responsibilities on behalf of the Institution, and as defined by the Institution in its policy on financial conflicts of interest, which may include for example: activities such as research, research consultation, teaching, professional practice, institutional committee memberships, and service on panels such as Institutional Review Boards or Data and Safety Monitoring Boards.

Investigator means the project director or principal Investigator and any other person, regardless of title or position, who is responsible for the design, conduct, or reporting of research funded by the PHS, or proposed for such funding, which may include, for example, collaborators or consultants.

Key personnel includes the PD/PI and any other personnel considered to be essential to work performance in accordance with HHSAR subpart 352.242–70 and identified as key personnel in the contract proposal and contract.

Manage means taking action to address a financial conflict of interest, which can include reducing or eliminating the financial conflict of interest, to ensure, to the extent possible, that the design, conduct, and reporting of research will be free from bias.

PD/PI means a project director or principal Investigator of a PHS-funded research project; the PD/PI is included in the definitions of key personnel and Investigator under this part.

PHS means the Public Health Service of the U.S. Department of Health and Human Services, and any components of the PHS to which the authority involved may be delegated, including the National Institutes of Health (NIH).

PHS Awarding Component means the organizational unit of the PHS that funds the research that is subject to this part.

Public Health Service Act or *PHS Act* means the statute codified at 42 U.S.C. 201 *et seq.*

Research means a systematic investigation, study or experiment designed to develop or contribute to generalizable knowledge relating broadly to public health, including behavioral and social-sciences research. The term encompasses basic and applied research (*e.g.,* a published article, book or book chapter) and product development (*e.g.,* a diagnostic test or drug). As used in this part, the term includes any such activity for which research funding is available from a PHS Awarding Component through a contract, whether authorized under the PHS Act or other statutory authority.

Significant financial interest means:

(1) A financial interest consisting of one or more of the following interests of the Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities:

(i) With regard to any publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds $5,000. For purposes of this definition, remuneration includes salary and any payment for services not otherwise identified as salary (*e.g.,* consulting fees, honoraria, paid authorship); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value;

(ii) With regard to any non-publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure, when aggregated, exceeds $5,000, or when the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (*e.g.,* stock, stock option, or other ownership interest); or

(iii) Intellectual property rights and interests (*e.g.,* patents, copyrights), upon receipt of income related to such rights and interests.

(2) Investigators also must disclose the occurrence of any reimbursed or sponsored travel (*i.e.,* that which is paid on behalf of the Investigator and not reimbursed to the Investigator so that the exact monetary value may not be readily available), related to their Institutional responsibilities; provided, however, that this disclosure requirement does not apply to travel that is reimbursed or sponsored by a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education. The Institution's FCOI policy will specify the details of this disclosure, which will include, at a minimum, the purpose of the trip, the identity of the sponsor/organizer, the destination, and the duration. In accordance with the Institution's FCOI policy, the Institutional official(s) will determine if further information is needed, including a determination or disclosure of monetary value, in order to determine whether the travel constitutes an FCOI with the PHS-funded research.

(3) The term *significant financial interest* does not include the following types of financial interests: salary, royalties, or other remuneration paid by the Institution to the Investigator if the Investigator is currently employed or otherwise appointed by the Institution, including intellectual property rights assigned to the Institution and agreements to share in royalties related to such rights; any ownership interest in the Institution held by the Investigator, if the Institution is a commercial or for-profit organization; income from investment vehicles, such as mutual funds and retirement accounts, as long as the Investigator does not directly control the investment decisions made in these vehicles; income from seminars, lectures, or teaching engagements sponsored by a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education; or income from service on advisory committees or review panels for a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education.

Small Business Innovation Research (SBIR) Program means the extramural research program for small businesses that is established by the Awarding Components of the Public Health Service and certain other Federal agencies under Public Law 97–219, the Small Business Innovation Development Act, as amended. For purposes of this part, the term SBIR Program also includes the Small Business Technology

Transfer (STTR) Program, which was established by Public Law 102–564.

§ 94.4 Responsibilities of Institutions regarding Investigator financial conflicts of interest.

Each Institution shall:

(a) Maintain an up-to-date, written, enforced policy on financial conflicts of interest that complies with this part, and make such policy available via a publicly accessible Web site. If the Institution does not have any current presence on a publicly accessible Web site (and only in those cases), the Institution shall make its written policy available to any requestor within five business days of a request. If, however, the Institution acquires a presence on a publicly accessible Web site during the time of the PHS award, the requirement to post the information on that Web site will apply within 30 calendar days. If an Institution maintains a policy on financial conflicts of interest that includes standards that are more stringent than this part (*e.g.,* that require a more extensive disclosure of financial interests), the Institution shall adhere to its policy and shall provide FCOI reports regarding identified financial conflicts of interest to the PHS Awarding Component in accordance with the Institution's own standards and within the timeframe prescribed by this part.

(b) Inform each Investigator of the Institution's policy on financial conflicts of interest, the Investigator's responsibilities regarding disclosure of significant financial interests, and of these regulations, and require each Investigator to complete training regarding the same prior to engaging in research related to any PHS-funded contract and at least every four years, and immediately when any of the following circumstances apply:

(1) The Institution revises its financial conflict of interest policies or procedures in any manner that affects the requirements of Investigators;

(2) An Investigator is new to an Institution; or

(3) An Institution finds that an Investigator is not in compliance with the Institution's financial conflict of interest policy or management plan.

(c) If the Institution carries out the PHS-funded research through a subrecipient (*e.g.,* subcontractors, or consortium members), the Institution (awardee Institution) must take reasonable steps to ensure that any subrecipient Investigator complies with this part by

(1) Incorporating as part of a written agreement with the subrecipient terms that establish whether the financial conflicts of interest policy of the awardee Institution or that of the subrecipient will apply to the subrecipient's Investigators.

(i) If the subrecipient's Investigators must comply with the subrecipient's financial conflicts of interest policy, the subrecipient shall certify as part of the agreement referenced above that its policy complies with this part. If the subrecipient cannot provide such certification, the agreement shall state that subrecipient Investigators are subject to the financial conflicts of interest policy of the awardee Institution for disclosing significant financial interests that are directly related to the subrecipient's work for the awardee Institution;

(ii) Additionally, if the subrecipient's Investigators must comply with the subrecipient's financial conflicts of interest policy, the agreement referenced above shall specify time period(s) for the subrecipient to report all identified financial conflicts of interest to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to provide timely FCOI reports, as necessary, to the PHS as required by this part;

(iii) Alternatively, if the subrecipient's Investigators must comply with the awardee Institution's financial conflicts of interest policy, the agreement referenced above shall specify time period(s) for the subrecipient to submit all Investigator disclosures of significant financial interests to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to comply timely with its review, management, and reporting obligations under this part.

(2) Providing FCOI reports to the PHS Awarding Component regarding all financial conflicts of interest of all subrecipient Investigators consistent with this part, *i.e.,* prior to the expenditure of funds and within 60 days of any subsequently identified FCOI.

(d) Designate an institutional official(s) to solicit and review disclosures of significant financial interests from each Investigator who is planning to participate in, or is participating in, the PHS-funded research.

(e)(1) Require that each Investigator who is planning to participate in the PHS-funded research disclose to the Institution's designated official(s) the Investigator's significant financial interests (and those of the Investigator's spouse and dependent children) no later than date of submission of the Institution's proposal for PHS-funded research.

(2) Require each Investigator who is participating in the PHS-funded research to submit an updated disclosure of significant financial interests at least annually, in accordance with the specific time period prescribed by the Institution, during the period of the award. Such disclosure shall include any information that was not disclosed initially to the Institution pursuant to paragraph (e)(1) of this section, or in a subsequent disclosure of significant financial interests (*e.g.,* any financial conflict of interest identified on a PHS-funded project that was transferred from another Institution), and shall include updated information regarding any previously disclosed significant financial interest (*e.g.,* the updated value of a previously disclosed equity interest).

(3) Require each Investigator who is participating in the PHS-funded research to submit an updated disclosure of significant financial interests within thirty days of discovering or acquiring (*e.g.,* through purchase, marriage, or inheritance) a new significant financial interest.

(f) Provide guidelines consistent with this part for the designated institutional official(s) to determine whether an Investigator's significant financial interest is related to PHS-funded research and, if so related, whether the significant financial interest is a financial conflict of interest. An Investigator's significant financial interest is related to PHS-funded research when the Institution, through its designated official(s), reasonably determines that the significant financial interest: Could be affected by the PHS-funded research; or is in an entity whose financial interest could be affected by the research. The Institution may involve the Investigator in the designated official(s)'s determination of whether a significant financial interest is related to the PHS-funded research. A financial conflict of interest exists when the Institution, through its designated official(s), reasonably determines that the significant financial interest could directly and significantly affect the design, conduct, or reporting of the PHS-funded research.

(g) Take such actions as necessary to manage financial conflicts of interest, including any financial conflicts of a subrecipient Investigator pursuant to paragraph (c) of this section. Management of an identified financial conflict of interest requires development and implementation of a management plan and, if necessary, a retrospective

review and mitigation report pursuant to § 94.5(a).

(h) Provide initial and ongoing FCOI reports to the PHS as required pursuant to § 94.5(b).

(i) Maintain records relating to all Investigator disclosures of financial interests and the Institution's review of, and response to, such disclosures (whether or not a disclosure resulted in the Institution's determination of a financial conflict of interest), and all actions under the Institution's policy or retrospective review, if applicable, for at least three years from the date of final payment or, where applicable, for the time periods specified in 48 CFR part 4, subpart 4.7.

(j) Establish adequate enforcement mechanisms and provide for employee sanctions or other administrative actions to ensure Investigator compliance as appropriate.

(k) Certify, in each contract proposal to which this part applies, that the Institution:

(1) Has in effect at that Institution an up-to-date, written, and enforced administrative process to identify and manage financial conflicts of interest with respect to all research projects for which funding is sought or received from the PHS;

(2) Shall promote and enforce Investigator compliance with this part's requirements including those pertaining to disclosure of significant financial interests;

(3) Shall manage financial conflicts of interest and provide initial and ongoing FCOI reports to the PHS Awarding Component consistent with this part;

(4) Agrees to make information available, promptly upon request, to the HHS relating to any Investigator disclosure of financial interests and the Institution's review of, and response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of a financial conflict of interest; and

(5) Shall fully comply with the requirements of this part.

§ 94.5 Management and reporting of financial conflicts of interest.

(a) Management of financial conflicts of interest.

(1) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the designated official(s) of an Institution shall, consistent with § 94.4(f): review all Investigator disclosures of significant financial interests; determine whether any significant financial interests relate to PHS-funded research; determine whether a financial conflict of interest exists; and, if so, develop and implement a management plan that shall specify the actions that have been, and shall be, taken to manage such financial conflict of interest. Examples of conditions or restrictions that might be imposed to manage a financial conflict of interest include, but are not limited to:

(i) Public disclosure of financial conflicts of interest (*e.g.,* when presenting or publishing the research);

(ii) For research projects involving human subjects research, disclosure of financial conflicts of interest directly to participants;

(iii) Appointment of an independent monitor capable of taking measures to protect the design, conduct, and reporting of the research against bias, resulting from the financial conflict of interest;

(iv) Modification of the research plan;

(v) Change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the research;

(vi) Reduction or elimination of the financial interest (*e.g.,* sale of an equity interest); or

(vii) Severance of relationships that create financial conflicts.

(2) Whenever, in the course of an ongoing PHS-funded research project, an Investigator who is new to participating in the research project discloses a significant financial interest or an existing Investigator discloses a new significant financial interest to the Institution, the designated official(s) of the Institution shall, within sixty days: review the disclosure of the significant financial interest; determine whether it is related to PHS-funded research; determine whether a financial conflict of interest exists; and, if so, implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such financial conflict of interest. Depending on the nature of the significant financial interest, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date of disclosure and the completion of the Institution's review.

(3) Whenever an Institution identifies a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Institution during an ongoing PHS-funded research project (*e.g.,* was not timely reviewed or reported by a subrecipient), the designated official(s) shall, within sixty days: review the significant financial interest; determine whether it is related to PHS-funded research; determine whether a financial conflict of interest exists; and, if so:

(i) Implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such financial conflict of interest going forward;

(ii) (A) In addition, whenever a financial conflict of interest is not identified or managed in a timely manner including failure by the Investigator to disclose a significant financial interest that is determined by the Institution to constitute a financial conflict of interest; failure by the Institution to review or manage such a financial conflict of interest; or failure by the Investigator to comply with a financial conflict of interest management plan, the Institution shall, within 120 days of the Institution's determination of noncompliance, complete a retrospective review of the Investigator's activities and the PHS-funded research project to determine whether any PHS-funded research, or portion thereof, conducted during the time period of the noncompliance, was biased in the design, conduct, or reporting of such research.

(B) The Institution is required to document the retrospective review; such documentation shall include, but not necessarily be limited to, all of the following key elements:

(1) Project number;

(2) Project title;

(3) PD/PI or contact PD/PI if a multiple PD/PI model is used;

(4) Name of the Investigator with the FCOI;

(5) Name of the entity with which the Investigator has a financial conflict of interest;

(6) Reason(s) for the retrospective review;

(7) Detailed methodology used for the retrospective review (*e.g.,* methodology of the review process, composition of the review panel, documents reviewed);

(8) Findings of the review; and

(9) Conclusions of the review.

(iii) Based on the results of the retrospective review, if appropriate, the Institution shall update the previously submitted FCOI report, specifying the actions that will be taken to manage the financial conflict of interest going forward. If bias is found, the Institution is required to notify the PHS Awarding Component promptly and submit a mitigation report to the PHS Awarding Component. The mitigation report must include, at a minimum, the key elements documented in the retrospective review above and a description of the impact of the bias on the research project and the Institution's

plan of action or actions taken to eliminate or mitigate the effect of the bias (*e.g.,* impact on the research project; extent of harm done, including any qualitative and quantitative data to support any actual or future harm; analysis of whether the research project is salvageable). Thereafter, the Institution will submit FCOI reports annually, as specified elsewhere in this part. Depending on the nature of the financial conflict of interest, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date that the financial conflict of interest or the Investigator's noncompliance is determined and the completion of the Institution's retrospective review.

(4) Whenever an Institution implements a management plan pursuant to this part, the Institution shall monitor Investigator compliance with the management plan on an ongoing basis until the completion of the PHS-funded research project.

(5)(i) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall ensure public accessibility, via a publicly accessible Web site or written response to any requestor within five business days of a request, of information concerning any significant financial interest disclosed to the Institution that meets the following three criteria:

(A) The significant financial interest was disclosed and is still held by key personnel as defined in this part;

(B) The Institution determines that the significant financial interest is related to the PHS-funded research; and

(C) The Institution determines that the significant financial interest is a financial conflict of interest.

(ii) The information that the Institution makes available via a publicly accessible Web site or written response to any requestor within five business days of a request, shall include, at a minimum, the following: The Investigator's name; the Investigator's title and role with respect to the research project; the name of the entity in which the significant financial interest is held; the nature of the significant financial interest; and the approximate dollar value of the significant financial interest (dollar ranges are permissible: $0–$4,999; $5,000–$9,999; $10,000–$19,999; amounts between $20,000–$100,000 by increments of $20,000; amounts above $100,000 by increments of $50,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value.

(iii) If the Institution uses a publicly accessible Web site for the purposes of this subsection, the information that the Institution posts shall be updated at least annually. In addition, the Institution shall update the Web site within sixty days of the Institution's receipt or identification of information concerning any additional significant financial interest of the senior/key personnel for the PHS-funded research project that was not previously disclosed, or upon the disclosure of a significant financial interest of senior/key personnel new to the PHS-funded research project, if the Institution determines that the significant financial interest is related to the PHS-funded research and is a financial conflict of interest. The Web site shall note that the information provided is current as of the date listed and is subject to updates, on at least an annual basis and within 60 days of the Institution's identification of a new financial conflict of interest. If the Institution responds to written requests for the purposes of this subsection, the Institution will note in its written response that the information provided is current as of the date of the correspondence and is subject to updates, on at least an annual basis and within 60 days of the Institution's identification of a new financial conflict of interest, which should be requested subsequently by the requestor.

(iv) Information concerning the significant financial interests of an individual subject to paragraph (a)(5) of this section shall remain available, for responses to written requests or for posting via the Institution's publicly accessible Web site for at least three years from the date that the information was most recently updated.

(6) In addition to the types of financial conflicts of interest as defined in this part that must be managed pursuant to this section, an Institution may require the management of other financial conflicts of interest in its policy on financial conflicts of interest, as the Institution deems appropriate.

(b) Reporting of financial conflicts of interest.

(1) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall provide to the PHS Awarding Component an FCOI report regarding any Investigator's significant financial interest found by the Institution to be conflicting and ensure that the Institution has implemented a management plan in accordance with this part. In cases in which the Institution identifies a financial conflict of interest and eliminates it prior to the expenditure of PHS-awarded funds, the Institution shall not submit an FCOI report to the PHS Awarding Component.

(2) For any significant financial interest that the Institution identifies as conflicting subsequent to the Institution's initial FCOI report during an ongoing PHS-funded research project (*e.g.,* upon the participation of an Investigator who is new to the research project), the Institution shall provide to the PHS Awarding Component, within sixty days, an FCOI report regarding the financial conflict of interest and ensure that the Institution has implemented a management plan in accordance with this part. Pursuant to paragraph (a)(3)(ii) of this section, where such FCOI report involves a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed or managed by the Institution (*e.g.,* was not timely reviewed or reported by a subrecipient), the Institution also is required to complete a retrospective review to determine whether any PHS-funded research, or portion thereof, conducted prior to the identification and management of the financial conflict of interest was biased in the design, conduct, or reporting of such research. Additionally, pursuant to paragraph (a)(3)(iii) of this section, if bias is found, the Institution is required to notify the PHS Awarding Component promptly and submit a mitigation report to the PHS Awarding Component.

(3) Any FCOI report required under paragraphs (b)(1) or (b)(2) of this section shall include sufficient information to enable the PHS Awarding Component to understand the nature and extent of the financial conflict, and to assess the appropriateness of the Institution's management plan. Elements of the FCOI report shall include, but are not necessarily limited to the following:

(i) Project/Contract number;

(ii) PD/PI or Contact PD/PI if a multiple PD/PI model is used;

(iii) Name of the Investigator with the financial conflict of interest;

(iv) Name of the entity with which the Investigator has a financial conflict of interest;

(v) Nature of the financial interest (*e.g.,* equity, consulting fee, travel reimbursement, honorarium);

(vi) Value of the financial interest (dollar ranges are permissible: $0–$4,999; $5,000–$9,999; $10,000–$19,999; amounts between $20,000–$100,000 by increments of $20,000; amounts above $100,000 by increments of $50,000), or a statement that the

interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value;

(vii) A description of how the financial interest relates to the PHS-funded research and the basis for the Institution's determination that the financial interest conflicts with such research; and

(viii) A description of the key elements of the Institution's management plan, including:

(A) Role and principal duties of the conflicted Investigator in the research project;

(B) Conditions of the management plan;

(C) How the management plan is designed to safeguard objectivity in the research project;

(D) Confirmation of the Investigator's agreement to the management plan;

(E) How the management plan will be monitored to ensure Investigator compliance; and

(F) Other information as needed.

(4) For any financial conflict of interest previously reported by the Institution with regard to an ongoing PHS-funded research project, the Institution shall provide to the PHS Awarding Component an annual FCOI report that addresses the status of the financial conflict of interest and any changes to the management plan for the duration of the PHS-funded research project. The annual FCOI report shall specify whether the financial conflict is still being managed or explain why the financial conflict of interest no longer exists. The Institution shall provide annual FCOI reports to the PHS Awarding Component for the duration of the project period (including extensions with or without funds) in the time and manner specified by the PHS Awarding Component.

(5) In addition to the types of financial conflicts of interest as defined in this part that must be reported pursuant to this section, an Institution may require the reporting of other financial conflicts of interest in its policy on financial conflicts of interest, as the Institution deems appropriate.

§ 94.6 Remedies.

(a) If the failure of an Investigator to comply with an Institution's financial conflicts of interest policy or a financial conflict of interest management plan appears to have biased the design, conduct, or reporting of the PHS-funded research, the Institution shall promptly notify the PHS Awarding Component of the corrective action taken or to be taken. The PHS Awarding Component will consider the situation and, as necessary, take appropriate action, or refer the matter to the Institution for further action, which may include directions to the Institution on how to maintain appropriate objectivity in the PHS-funded research project.

(b) The PHS Awarding Component and/or HHS may inquire at any time (before, during, or after award) into any Investigator disclosure of financial interests and the Institution's review of, and response to, such disclosure, regardless of whether or not the disclosure resulted in the Institution's determination of a financial conflict of interest. An Institution is required to submit, or permit on site review of, all records pertinent to compliance with this part. To the extent permitted by law, HHS will maintain the confidentiality of all records of financial interests. On the basis of its review of records or other information that may be available, the PHS Awarding Component may decide that a particular financial conflict of interest will bias the objectivity of the PHS-funded research to such an extent that further corrective action is needed or that the Institution has not managed the financial conflict of interest in accordance with this part. The PHS Awarding Component may determine that issuance of a Stop Work Order by the Contracting Officer or other enforcement action is necessary until the matter is resolved.

(c) In any case in which the HHS determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment has been designed, conducted, or reported by an Investigator with a financial conflict of interest that was not managed or reported by the Institution as required by this part, the Institution shall require the Investigator involved to disclose the financial conflict of interest in each public presentation of the results of the research and to request an addendum to previously published presentations.

Dated: February 24, 2011.

Francis S. Collins,

Director, National Institutes of Health.

Approved: March 2, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–21633 Filed 8–23–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Thursday,
No. 165 August 25, 2011

Part V

The President

Federal Register
Vol. 76, No. 165
Thursday, August 25, 2011

Presidential Documents

Title 3—

The President

Presidential Determination No. 2011–12 of August 8, 2011

Unexpected Urgent Refugee and Migration Needs Related to the Horn of Africa

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (the ''Act''), as amended, (22 U.S.C. 2601(c)(1)), I hereby determine, pursuant to section 2(c)(1) of the Act, that it is important to the national interest to furnish assistance under the Act, in an amount not to exceed $10 million from the United States Emergency Refugee and Migration Assistance Fund, for the purpose of meeting unexpected and urgent refugee and migration needs, including by contributions to international, governmental, and nongovernmental organizations and payment of administrative expenses of the Bureau of Population, Refugees, and Migration of the Department of State, related to the humanitarian crisis in the Horn of Africa.

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

THE WHITE HOUSE,
Washington, August 8, 2011

[FR Doc. 2011–21958
Filed 8–24–11; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2011–13 of August 10, 2011

Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Colombia, that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary, because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register* and to notify the Congress of this determination.

THE WHITE HOUSE,
Washington, August 10, 2011

[FR Doc. 2011–21959
Filed 8–24–11; 11:15 am]
Billing code 4710–10–P

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Federal Register

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Thursday, August 25, 2011

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FEDERAL REGISTER PAGES AND DATE, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

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H.R. 2553/P.L. 112–27
Airport and Airway Extension Act of 2011, Part IV (Aug. 5, 2011; 125 Stat. 270)

H.R. 2715/P.L. 112–28
To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes. (Aug. 12, 2011; 125 Stat. 273)

Last List August 5, 2011

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