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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AI16

Upland Cotton Base Quality

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule makes technical changes to the Commodity Credit Corporation (CCC) upland cotton marketing assistance loan (MAL) regulations to revise certain grade and quality references. Changes include revising references to specific quality characteristics of certain base quality grades to simply a reference to the ''base quality'' of the grade without further specification. CCC uses base quality to calculate upland cotton loan rates, Adjusted World Price (AWP), and related adjustments. This change will accommodate any future changes to the base quality specifications that define the base quality characteristics of a particular grade. This rule also changes a broad reference of a base grade to a more specific reference that names the particular relevant grade. None of these changes involve a change of policy and would not have affected any program determinations in past crop years, had these changes been in place at the time. They improve the regulations by maintaining consistency with base quality specifications as that may change in the future. This amendment will apply starting with the 2012 crop.

DATES: *Effective date:* April 3, 2012.

FOR FURTHER INFORMATION CONTACT: Gene Rosera, Economic and Policy Analysis Staff, FSA; telephone (202) 720–8837, email: *gene.rosera@wdc.usda.gov*. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The Farm Service Agency (FSA) operates an upland cotton MAL program for upland cotton using CCC funds. The base quality loan rate is set in section 1201 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill, Pub. L. 110–246) at 52 cents a pound for the 2008 through 2012 crop years. Loan rates for individual bales depend on the grade of the cotton and the quality within the grade. The grades referenced in this rule are Middling (M), Strict Middling (SM), and Strict Low Middling (SLM). The loan schedule provides a base grade that produces a loan rate of 52 cents per pound at base quality. That base grade is SLM 1 1/16-inch, leaf 4 cotton. Producers can either forfeit the cotton in satisfaction of the loan or repay the loan at a rate that is based, generally, on a calculated AWP. Repayment rates are adjusted, like the loan rates themselves, based on grade and quality within the grade. FSA uses measures of strength and length uniformity in determining the price support value of a bale of upland cotton. The base-quality ranges for these factors are those for which loan rate premiums and discounts do not apply. The calculations specified in § 1427.25(c)(2) are used to make an overall adjustment in basic repayment rates for cotton loans while § 1427.25(e)(2)(ii) and (f)(2)(ii) are directed at coarse count and fine count adjustments, respectively, in the repayment rates for certain cotton grades.

Prior to this rule, the cotton regulations specified in 7 CFR part 1427 that various AWP adjustments be made based on comparisons between certain loan rates for base qualities of certain grades. However, rather than simply refer to the ''base quality'' those specific qualities of the base grade (micronaire, length uniformity, and strength) are stated in the rules. That specificity creates technical problems if the loan schedules and base grade specifications are changed. CCC establishes upland cotton base quality ranges administratively, based in part on the ranges reported by the cotton industry to the USDA Agricultural Marketing Service (AMS). AMS can and does change the specification of ''base quality'' cotton in response to observed market valuation of quality attributes. By replacing the specific ranges with the term ''base quality,'' CCC's use of the term in the regulation remains consistent with AMS in the future.

Prior to this rule, § 1427.25(c) made an adjustment, ''between the applicable loan rate for an upland cotton crop for M 1 3/32-inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton and the loan rate for base quality upland cotton.'' This rule addresses, first, the specification in § 1427.25(c)(2) regarding the references to M 1 3/32-inch, leaf 3. This rule eliminates the base quality specifications in the regulation (micronaire 3.5 through 3.6 and 4.3 through 4.9, etc.). The text regarding that grade is being changed to simply refer to ''base quality M 1 3/32-inch, leaf 3.'' Should the specifications for base quality for ''M 1 3/32-inch, leaf 3'' change in the future, there will be no need to change the regulations.

Second, this rule makes another change to § 1427.25(c)(2). The regulation as quoted above refers to comparing the applicable ''M 1 3/32-inch, leaf 3'' loan rate to ''the loan rate for base quality upland cotton.'' That reference in § 1427.25(c)(2) to ''base quality upland cotton'' is to the base grade for upland cotton MALs—as noted above—namely, base quality SLM 1 1/16-inch, leaf 4 cotton. So that the regulations may be specific and not create confusion with the ''base quality'' references that are being added with respect to other grades, this rule changes the reference in § 1427.25(c)(2) to ''base quality upland cotton'' to a specific reference to ''base quality SLM 1 1/16-inch, leaf 4 cotton.'' With these two changes, the regulations in § 1427.25(c)(2) will provide for a comparison ''between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SLM 1 1/32-inch, leaf 4 cotton.'' Had that language been in place in 2011, there would have been no change in adjusted price determinations specified in § 1427.25(c)(2). The same will be true in 2012 and thereafter if there is no change to the base quality specifications for the ''M 1 3/32-inch, leaf 3'' and ''SLM 1 1/32-

inch, leaf 4'' grades. But if there are changes, then no conforming adjustment in the regulations will be needed since the changes in the base quality specifications would be incorporated, in effect, by the generic reference to the ''base quality'' of those two grades. The base qualities of the grades will be whatever the standards current at that time specify.

Similarly, in § 1427.25(e)(2)(ii) and (f)(ii) of the regulations there are other references to the ''M 1 3/32-inch, leaf 3'' grade like the one to that grade in § 1427.25(c)(2)—that is, with the specific qualities of the base grade set out. There are also similar references with similar specificity regarding the grade ''SLM 1 1/32-inch, leaf 4'' in § 1427.25(e)(2)(ii) and grade ''SM 1 1/8-inch, leaf 2'' in § 1427.25 (f)(2)(ii). As with the change regarding grade ''M 1 3/32-inch, leaf 3'' in § 1427.25(c)(2), the references to base quality for that grade and the other grades § 1427.25(e)(2)(ii) and (f)(2)(ii) are modified to replace the specification for base quality with a reference to the use of the ''base quality'' grade in the comparison (whatever those specifications have been). Therefore, this rule changes the reference in § 1427.25(e)(2)(ii) to a comparison ''between the applicable loan rate for an upland cotton crop for M 1 3/32-inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton and the loan rate for an upland cotton crop for SLM 1 1/32-inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton'' to a comparison ''between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SLM 1 1/32-inch, leaf 4 cotton.''

Likewise, this rule changes the comparison in § 1427.25(f)(2)(ii) from a comparison ''between the applicable loan rate for an upland cotton crop for M 1 3/32-inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton and the loan rate for an upland cotton crop for SM 1 1/8-inch, leaf 2, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton'' to specify that it is a comparison ''between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SM 1 1/8-inch, leaf 2 cotton.''

Neither of these changes in § 1427.25(e)(2)(ii) and (f)(2)(ii) would have affected, had they been in place earlier, previous determinations of loan repayment rates. However like the § 1427.25(c)(2) changes, these changes accommodate future changes in what constitutes ''base quality'' in the specific grades listed there.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 1601(c)(2) of the 2008 Farm Bill, which requires that the regulations to implement Title I of the 2008 Farm Bill be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Also, this rule is technical in nature, not substantive, and a delay in implementing this rule would be contrary to the public interest.

Executive Order 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore has not reviewed this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) 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. This rule is not subject to the Regulatory Flexibility Act because CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The technical corrections identified in this final rule do not change the structure or goals of the program and can be considered simply administrative in nature. Therefore, FSA has determined that NEPA does not apply to this final rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule would not have any substantial direct effect on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law. USDA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of USDA regulations.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act

OMB has designated this rule as not significant. As a result, this rule is not considered a major rule under SBREFA and FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective on the date of publication in the **Federal Register**.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Domestic Federal Assistance to which this rule will apply is Commodity Loan and Loan Deficiency Payments—10.051.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government Information and services, and for other purposes.

List of Subjects in 7 CFR Part 1427

Cotton, Cottonseeds, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

For the reasons discussed above, this rule amends 7 CFR part 1427 as follows:

PART 1427—COTTON

■ 1. The authority for part 1427 continues to read as follows:

Authority: 7 U.S.C. 7231–7236 and 8737; and 15 U.S.C. 714b, and 714c.

■ 2. Amend § 1427.25 by revising paragraphs (c)(2), (e)(2)(ii), and (f)(2)(ii) to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

* * * * *

(c) * * *

(2) The price determined as specified in paragraph (c)(1) of this section will be adjusted to reflect the price of base quality upland cotton by deducting the difference, as CCC announces, between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for base quality SLM 1 1/16-inch, leaf 4 cotton.

* * * * *

(e) * * *

(2) * * *

(ii) The difference between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SLM 1 1/32-inch, leaf 4 cotton.

* * * * *

(f) * * *

(2) * * *

(ii) The difference between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SM 1 1/8-inch, leaf 2 cotton.

* * * * *

Signed on March 28, 2012.

Bruce Nelson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2012–7990 Filed 4–2–12; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1314; Airspace Docket No. 11–AWP–18]

Amendment of Class E Airspace; Willcox, AZ, and Revocation of Class E Airspace; Cochise, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Willcox, AZ, and removes Class E airspace at Cochise, AZ. The airspace designation listed as Cochise, AZ, is combined with Cochise County Airport, Willcox, AZ. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Cochise County Airport, Willcox, AZ. Decommissioning of the Cochise VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC) has made this action necessary for the safety and management of aircraft operations at the airport.

DATES: Effective date, 0901 UTC, May 31, 2012. 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 January 10, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Willcox, AZ, and remove the controlled airspace designation at Cochise, AZ (77 FR 1428). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was

received. The commenter agreed with the airspace change but was concerned about the increased air traffic. This airspace amendment will not increase the air traffic at Cochise County Airport. The Cochise, AZ airspace designation is merely being incorporated into the existing Willcox, AZ airspace designation.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 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 Cochise County Airport, Willcox, AZ. Controlled airspace is necessary to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. This action removes the Cochise, AZ airspace designation extending upward from 1,200 feet above the surface and combines it with the existing Cochise County Airport, Willcox, AZ, designation. Decommissioning of the Cochise VORTAC has made this action necessary, and enhances the safety and management of aircraft operations within the National Airspace System.

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 modifies controlled airspace at Cochise County Airport, Willcox, AZ, and removes the airspace designation for the Cochise, AZ VORTAC.

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 part 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

AWP AZ E5 Willcox, AZ [Modified]

Cochise County Airport, AZ
(Lat. 32°14′44″ N., long. 109°53′41″ W.)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Cochise County Airport and within 5 miles each side of the 225° bearing of the Cochise County Airport extending from the 6.5-mile radius to 14.5 miles southwest of the airport, and within 5.5 miles southeast and 4.5 miles northwest of the 055° bearing of the Cochise County Airport extending from the 6.5-mile radius to 14.5 miles northeast of the airport. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 32°22′30″ N., long. 110°00′02″ W.; to lat. 32°22′00″ N., long. 109°57′30″ W.; to lat. 32°30′00″ N., long. 109°54′00″ W.; to lat. 32°22′40″ N., long. 109°25′00″ W.; to lat. 32°15′30″ N., long. 109°27′30″ W.; to lat. 32°14′25″ N., long. 109°25′22″ W.; to lat. 32°10′20″ N., long. 109°25′22″ W.; to lat. 32°10′20″ N., and the Arizona/New Mexico border, thence south along the Arizona/New Mexico border to lat. 31°52′40″ N.; to lat. 31°54′00″ N., long. 109°25′27″ W.; to lat. 31°57′05″ N., long. 109°55′02″ W.; to lat. 32°07′00″ N., long. 109°54′02″ W.; to lat. 32°07′30″ N., long. 110°00′02″ W., thence to the point of beginning.

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

* * * * *

AWP AZ E5 Cochise, AZ [Removed]

Issued in Seattle, Washington, on March 26, 2012.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–7933 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1275; Airspace Docket No. 11–ANM–26]

Amendment of Class E Airspace; Hugo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Hugo, CO. Decommissioning of the Hugo Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations in the vicinity of the Hugo VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME). This action also makes a minor adjustment to the geographic coordinates of the VOR/DME and makes a correction to the regulatory text. Also, the legal description is better clarified at the request of the National Aeronautical Navigation Services (NANS).

DATES: Effective date, 0901 UTC, May 31, 2012. 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 December 19, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend

controlled airspace at Hugo, CO (76 FR 78576). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, it was discovered by NANS that the legal description needed editing by removing the unneeded text ''* * * excluding the airspace within Federal Airways''. This action makes those edits.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, 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 amending Class E airspace extending upward from 700 feet above the surface in the vicinity of the Hugo VOR/DME, CO. The Hugo TACAN has been decommissioned and replaced with a VOR/DME. The Federal airway listed in the regulatory text as V–19 is edited to read V–83. Also, the geographic coordinates of the VOR/DME are updated to coincide with the FAA's aeronautical database. 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 amends controlled airspace in the vicinity of the Hugo VOR/DME, CO.

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 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

ANM CO E5 Hugo, CO [Amended]

Hugo VOR/DME

(Lat. 38°49′03″ N., long. 103°37′17″ W.)

That airspace south and east of the Hugo VOR/DME extending upward from 8,500 feet MSL, bounded on the west by V–83, on the northwest by V–108 and V–169, on the north by V–4, on the northeast by V–17, on the southeast by V–216, and on the south by V–210.

Issued in Seattle, Washington, on March 23, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–7935 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1247; Airspace Docket No. 11–ANM–24]

Amendment of Class E Airspace; Springfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Springfield Municipal Airport, Springfield, CO. Decommissioning of the Tobe Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, May 31, 2012. 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 January 10, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Springfield, CO (77 FR 1429). 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 7400.9V dated August 9, 2011, and effective September 15, 2011, 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 amending Class E surface airspace extending upward from 700 feet above the surface, at Springfield Municipal Airport, Springfield, CO. Airspace reconfiguration is necessary due to the decommissioning of the Tobe TACAN. 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 amends controlled airspace at Springfield Municipal Airport, Springfield, CO.

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 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

ANM CO E5 Springfield, CO [Amended]

Springfield Municipal Airport, CO
(Lat. 37°27′31″ N., long. 102°37′05″ W.)
Tobe VOR/DME
(Lat. 37°15′31″ N., long. 103°36′00″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Springfield Municipal Airport; that airspace extending upward from 1,200 feet above the surface beginning at Tobe VOR/DME, thence north along V–169 to lat. 38°34′00″ N.; to lat. 38°34′00″ N., long. 102°00′00″ W.; to lat. 36°30′00″ N., long. 102°00′00″ W.; thence west on lat. 36°30′00″ N., to V–81; thence northwest along V–81 to the point of beginning.

Issued in Seattle, Washington, on March 23, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–7938 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1338; Airspace Docket No. 11–ANM–27]

Amendment of Class E Airspace; Tobe, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Tobe, CO. Decommissioning of the Tobe Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations in the vicinity of the Tobe VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME).

DATES: Effective date, 0901 UTC, May 31, 2012. 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 January 31, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Tobe, CO (77 FR 4708). 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 7400.9V dated August 9, 2011, and effective September 15, 2011, 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 amending Class E airspace extending upward from 8,500 feet Mean Sea Level (MSL) in the vicinity of the Tobe VOR/DME. Airspace reconfiguration is necessary due to the decommissioning of the Tobe TACAN. This action would enhance the safety and management of aircraft operations in the vicinity of the Tobe VOR/DME, CO.

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 amends controlled airspace at Tobe, CO.

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 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

ANM CO E5 Tobe, CO [Modified]

Tobe VOR/DME
(Lat. 37°15′31″ N., long. 103°36′00″ W.)

That airspace north of the Tobe VOR/DME extending upward from 8,500 feet MSL, bounded on the north by V–210, on the southeast by V–263, and on the west by V–389.

Issued in Seattle, Washington, on March 26, 2012.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–7939 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0828; Airspace Docket No. 11–AGL–16]

Establishment of Class E Airspace; Boyne City, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Boyne City, MI. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Boyne City Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, May 31, 2012. 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: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 28, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Boyne City, MI, area, creating additional controlled airspace at Boyne City Municipal Airport (76 FR 72868) Docket No. FAA–2011–0828. 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 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Boyne City Municipal Airport, Boyne City, MI. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it established controlled airspace at Boyne City Municipal Airport, Boyne City, MI.

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 Part 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

AGL MI E5 Boyne City, MI [New]

Boyne City Municipal Airport, MI
(Lat. 45°12′32″ N., long. 84°59′24″ W.)

That airspace extending upward from 700 feet above the surface within a 9.9-mile

radius of Boyne City Municipal Airport, and within 2 miles each side of the 080 degree bearing from the airport extending from the 9.9-mile radius to 11.9 miles east of the airport.

Issued in Fort Worth, Texas, on March 26, 2012.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–7932 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1149–F]

RIN 1120–AB49

Inmate Communication With News Media: Removal of Byline Regulations

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) finalizes an interim rule published April 23, 2010, regarding inmate contact with the community which deleted two previous Bureau regulations that prohibited inmates from publishing under a byline, due to a recent court ruling invalidating Bureau regulation language containing this prohibition.

DATES: This rule is effective on May 3, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons (Bureau) finalizes an interim rule regarding inmate contact with the community which deleted two previous Bureau regulations that prohibited inmates from publishing under a byline, due to a recent court ruling invalidating Bureau regulation language containing this prohibition. The interim rule was published on April 23, 2010 (75 FR 21163), and a technical correction (correcting the effective date of the interim rule to May 7, 2010) was published on May 7, 2010 (75 FR 25110). We received one comment on the interim rule, which we address below.

The commenter first objected to the Bureau's interim rule as having been promulgated incorrectly under the Administrative Procedure Act (APA) (5 U.S.C. 553, *et seq.*). The commenter stated that the Bureau did not articulate ''good cause'' under the APA to forego normal notice-and-comment rulemaking procedures.

In response, the Bureau explained its ''good cause'' in the interim rule. The Bureau stated that the APA (5 U.S.C. § 553(b)(3)(B)) allows exceptions to notice-and-comment rulemaking ''when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The Bureau indicated it would be impracticable to invite public comment on the result of a court order invalidating a regulatory provision because prompt implementation of the court order was necessary to afford inmates the benefit of the court's decision and to protect the Bureau from liability arising from potential application of an invalidated regulation.

The commenter states that it was not enough for the Bureau to recognize that the court in *Jordan* v. *Pugh,* 504 F.Supp.2d 1109 (D. Colo. 2007), issued a decision invalidating the byline language of § 540.20(b). In the interim rule, the Bureau stated that the court found that not all inmate publishing under a byline jeopardizes security, and overruled the byline portion of the provision as facially overbroad for prohibiting all such activity. The commenter posits that the Bureau should have mentioned the ultimate holding in that case. We therefore do so below. The *Jordan* court held as follows:

> Court concludes that the Byline Regulation violates the First Amendment rights of Mr. Jordan, other inmates in federal institutions, and the press * * *
>
> *It is therefore ordered* that judgment shall enter in favor of the Plaintiff, Mark Jordan, and against the Defendants, Michael V. Pugh, J. York, R.E. Derr, B. Sellers, and Stanley Rowlett, in their official capacities:
>
> (1) *Declaring* that the language of 28 CFR 540.20(b), ''The inmate may not * * * publish under a byline'', violates the First Amendment to the United States Constitution; and
>
> (2) *Enjoining* the Federal Bureau of Prisons from punishing any inmate for violation of 28 CFR 540.20(b)'s provision that: ''The inmate may not * * * publish under a byline.''

Id. at 1126.

In so holding, the court invalidated 28 CFR 540.20(b)'s ''byline'' language, a fact that the Bureau indicated in the preamble to the interim rule. The commenter states that ''rulemaking prompted by a significant court ruling that holds that a regulation 'violates the First Amendment rights' of the press deserves the full notice-and-comment process specified by law, so that the public may review the Court's ruling, evaluate the Bureau's response, and comment.'' The commenter cites to no authority for this statement, and does not take into consideration that the public was able to review the decision when it was published in 2007. The Bureau's response is simple—remove the invalidated regulations. The public was given the opportunity to comment on the Bureau's action during the comment period for the interim rule.

The commenter also rejects the Bureau's statement that the interim rule was necessary to protect the Bureau from liability arising from potential application of an invalidated regulation because the interim rule was published in 2010 whereas the decision was published in 2007. The commenter states that the Bureau should have issued a notice to Bureau staff in 2007 to not enforce the invalidated regulations. The Bureau did, in fact, issue mandatory guidance to its staff on November 27, 2007, which stated that the Bureau

> is revising these regulations to remove the byline provision invalidated by the court. Until that occurs, however, an inmate's publishing under a byline, by itself, can no longer support disciplinary action * * * [W]hile the court expressly limited its holding only to the byline language of § 540.20(b), neither should Bureau staff discipline inmates for publishing under a byline under the identical provision in § 540.62(d).

The commenter then argues that the provision in the rule stating that inmates may not act as reporters violates the First Amendment of the U.S. Constitution. We note that this provision was unchanged by the interim rule. However, the commenter indicates that ''[b]y repealing the 'byline language' and leaving the prohibition on acting as a reporter, the Bureau has not correctly responded to the holding of the *Jordan* case.''

We note that the holding in *Jordan* was limited to invalidation of the ''byline'' language, not the ''reporter'' language. In *Jordan,* the court referred to a memorandum issued by the Bureau's Office of General Counsel on October 20, 2006, in which the Bureau clarified to staff that ''acting as a reporter'' means doing so ''on a regular or repeated basis,'' as opposed to a one-time publication under a byline. This is an important distinction because regular, repeated, compensated activity as a reporter signifies that the inmate is conducting a business, which is prohibited by the Bureau's inmate discipline regulations. Prevention of conducting a business was recognized by the *Jordan* court as a ''legitimate penological objective.'' *Id.* at 1123.

Also, the court noted that the plaintiff, a federal inmate, had ''never acted, requested to act or has been requested to act as a reporter,'' and therefore chose to restrict its decision to the ''byline'' language without addressing the ''reporter'' language. In footnote 25, the court stated that the reporter ''portion of the regulation is not before the Court.'' Further, when the Bureau attempted to justify the ''byline'' language by indicating that publishing under a byline amounts to unauthorized conducting of a business, the court stated as follows:

> [T]his argument would carry more weight if the Court were addressing the portion of the Byline Regulation prohibiting inmates from acting as reporters. The role of a reporter envisions a relationship between the news media and the inmate, for which the inmate is compensated. But the scope of this lawsuit does not include the reporter portion of the regulation, and the danger of an inmate conducting a business simply because the inmate publishes a writing under a byline in the news media is much more remote.

Id. at 1123.

The court's recognition of the distinction between ''publishing under a byline'' and ''acting as a reporter'' is clear from the language of the *Jordan* opinion. Likewise, the court's recognition of this distinction is clear in its holding invalidating *only* the ''byline'' portion of the regulation but not the ''reporter'' portion. We therefore decline to remove the provision in the regulation prohibiting acting as a reporter.

For the aforementioned reasons, the interim rule published on April 23, 2010 (75 FR 21163), is hereby finalized without change.

Executive Order 12866

This regulation does not fall within a category of actions that the Office of Management and Budget (OMB) has determined to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

The Bureau of Prisons has assessed the costs and benefits of this regulation as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. There will be no new costs associated with this regulation.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders and immigration detainees committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 540

Prisoners.

For the aforementioned reasons, the interim rule published on April 23, 2010 (75 FR 21163), is hereby finalized without change.

Charles E. Samuels, Jr.,

Director, Bureau of Prisons.

[FR Doc. 2012–7971 Filed 4–2–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Bloodborne Pathogens Standard; Corrections and Technical Amendment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; corrections and technical amendment.

SUMMARY: OSHA is making a technical amendment to its Bloodborne Pathogens Standard by moving the rule's paragraph on sharps injury log requirements from paragraph (i), entitled ''Dates,'' to paragraph (h), entitled ''Recordkeeping.''

DATES: The effective date for the corrections and technical amendment to the standard is April 3, 2012.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999.

General and technical information: Andrew Levinson, Director, OSHA Office of Biological Hazards, OSHA, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2001, OSHA revised the Bloodborne Pathogens Standard (29 CFR 1910.1030) to include requirements of the Needlestick Safety and Prevention Act, November 6, 2000 (Pub. L. 106–430). These revisions included adding a fifth subparagraph, entitled ''Sharps injury log,'' to paragraph (h) of § 1910.1030 (66 FR 5325). However, in the July 1, 2001, publication of the CFR, subparagraph (5) was under paragraph (i) (''Dates''). These corrections and technical amendment relocate subparagraph (5) under paragraph (h) (''Recordkeeping'').

List of Subjects in 29 CFR Part 1910

Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements.

III. Authority and Signature

David Michaels, MPH, Ph.D., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210,

authorized the preparation of this document. Accordingly, pursuant to Section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Section 4 of the Administrative Procedures Act (5 U.S.C. 553), Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR 1911.5.

Signed at Washington, DC, on March 27, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, revise 29 CFR part 1910 by making the following correcting amendments:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

■ 1. The authority citation for part 1910. 1030 Subpart Z is revised to read as follows:

Authority: 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable, and 29 CFR 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553, Section 1910.1000 Tables Z–1, Z–2, and Z–3, but not under 29 CFR 1911, except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under 40 U.S.C. 3704 and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Pub. L. 106–430, 114 Stat. 1901.

Section 1910.1201 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 533.

■ 2. In § 1910.1030, add paragraph (h)(5) and revise paragraph (i) to read as follows:

§ 1910.1030 Bloodborne pathogens.

* * * * *

(h) * * *

(5) *Sharps injury log.* (i) The employer shall establish and maintain a sharps injury log for the recording of percutaneous injuries from contaminated sharps. The information in the sharps injury log shall be recorded and maintained in such manner as to protect the confidentiality of the injured employee. The sharps injury log shall contain, at a minimum:

(A) The type and brand of device involved in the incident,

(B) The department or work area where the exposure incident occurred, and

(C) An explanation of how the incident occurred.

(ii) The requirement to establish and maintain a sharps injury log shall apply to any employer who is required to maintain a log of occupational injuries and illnesses under 29 CFR part 1904.

(iii) The sharps injury log shall be maintained for the period required by 29 CFR 1904.33.

(i) *Dates*—(1) *Effective Date.* The standard shall become effective on March 6, 1992.

(2) The Exposure Control Plan required by paragraph (c) of this section shall be completed on or before May 5, 1992.

(3) Paragraphs (g)(2) Information and Training and (h) Recordkeeping of this section shall take effect on or before June 4, 1992.

(4) Paragraphs (d)(2) Engineering and Work Practice Controls, (d)(3) Personal Protective Equipment, (d)(4) Housekeeping, (e) HIV and HBV Research Laboratories and Production Facilities, (f) Hepatitis B Vaccination and Post-Exposure Evaluation and Follow-up, and (g)(1) Labels and Signs of this section, shall take effect July 6, 1992.

* * * * *

[FR Doc. 2012–7715 Filed 4–2–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0020]

RIN 1625–AA08

Special Local Regulations; Charleston Race Week, Charleston Harbor, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of Charleston Harbor in Charleston, South Carolina during Charleston Race Week, a series of sailboat races. The races are scheduled to take place on Friday, April 20, 2012, through Sunday, April 22, 2012. Approximately 170 sailboats are anticipated to participate in the races, and approximately 40 spectator vessels are expected to attend the event. These special local regulations are necessary to provide for the safety of life on navigable waters of the United States during the races. The special local regulations consist of three race areas. Except for those person and vessels participating in the sailboat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race areas unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from 9 a.m. on April 20, 2012, through 4:30 p.m. on April 22, 2012. This rule will be enforced daily from 9 a.m. until 4:30 p.m. on April 20, 2012, through April 22, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0020 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0020 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 temporary final rule, call or email Ensign John Santorum, Sector Charleston Waterways Management Division, Coast Guard; telephone (843) 740–3184, email *John.R.Santorum@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 the Coast Guard did not receive necessary information about the event until February 11, 2012. As a result, the Coast

Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators, and the general public.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to insure safety of life on navigable waters of the United States during three Charleston Race Week sailboat races.

Discussion of Rule

From April 20, 2012 through April 22, 2012, Charleston Ocean Racing Association will host three sailboat races on Charleston Harbor in Charleston, South Carolina during Charleston Race Week. Approximately 170 sailboats will be participating in the three races. It is anticipated that at least 40 spectator vessels will be present during the races.

The rule establishes special local regulations on certain waters of Charleston Harbor in Charleston, South Carolina. The special local regulations will be enforced daily from 9 a.m. until 4:30 p.m. on April 20, 2012 through April 22, 2012. The special local regulations consist of the following three race areas.

1. *Race Area #1.* All waters encompassed within an 800 yard radius of position 32°46′39″ N, 79°55′10″ W.
2. *Race Area #2.* All waters encompassed within a 900 yard radius of position 32°45′48″ N, 79°54′46″ W.
3. *Race Area #3.* All waters encompassed within a 900 yard radius of position 32°45′44″ N, 79°53′32″ W.

Except for those persons and vessels participating in the sailboat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the race areas may contact the Captain of the Port Charleston by telephone at (843)740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the race areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

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

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the 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 not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for only 21 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) persons and vessels may still enter, transit through, anchor in, or remain within the regulated areas if authorized by the Captain of the Port Charleston or a designated representative; and (5) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 intending to enter, transit through, anchor in, or remain within the waters of Charleston Harbor encompassed within the regulated areas from 9:30 a.m. until 4:30 p.m. daily from April 20, 2012 through April 22, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and

determined that this rule does not have implications for federalism.

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 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.

Taking of Private Property

This rule will not effect 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)(h), of the Instruction. This rule involves special local regulations issued in conjunction with a regatta or marine parade. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–0020 to read as follows:

§ 100.35T07–0020 Special Local Regulations; Charleston Race Week, Charleston Harbor, Charleston, SC.

(a) *Regulated areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *Race Area #1.* All waters encompassed within an 800 yard radius of position 32°46′39″ N, 79°55′10″ W.

(2) *Race Area #2.* All waters encompassed within a 900 yard radius of position 32°45′48″ N, 79°54′46″ W.

(3) *Race Area #3.* All waters encompassed within a 900 yard radius of position 32°45′44″ N, 79°53′32″ W.

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

(c) *Regulations.* (1) Except for those person and vessels participating in the sailboat races, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the regulated areas may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the regulated areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

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

(d) *Enforcement periods.* This rule will be enforced daily from 9 a.m. until 4:30 p.m. on April 20, 2012 through April 22, 2012.

Dated: February 27, 2012.

Michael F. White, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2012–7963 Filed 4–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0250]

Drawbridge Operation Regulation; Mile 21.6, Illinois Waterway, Hardin, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Hardin Drawbridge across the Illinois Waterway, mile 21.6, at Hardin, Illinois. The deviation is necessary to replace the main gear case that operates the lift span. The gear case has been making noise indicating possible failure. This deviation allows the bridge to remain in the closed position while the existing gear box is replaced with one recently fabricated.

DATES: This deviation is effective from 7 a.m. on April 3, 2012 through 7 p.m. on April 5, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0250 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0250 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Illinois Department of Transportation requested a temporary deviation for the Hardin Drawbridge, across the Illinois Waterway, mile 21.6, at Hardin, Illinois to remain in the closed-to-navigation position for a two and one half day period while the main gear case is replaced. The closure period will start at 7 a.m. on or about April 3, 2012 and end at 7 p.m. on April 5, 2012.

Once the existing gear case is removed, the lift span will not be able to open, even for emergencies, until the replacement gear box is installed.

The Hardin Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Illinois Waterway. The Hardin Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 25.9 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with the waterway users.

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

Dated: March 22, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–7922 Filed 4–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 160

[Docket No. USCG–2011–0076]

RIN 1625–AB60

Inflatable Personal Flotation Devices

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is harmonizing structural and performance standards for inflatable recreational personal flotation devices (PFDs) with current voluntary industry consensus standards. The Coast Guard is also slightly modifying regulatory text in anticipation of a future rulemaking addressing the population for which inflatable recreational PFDs are approved, but is not changing the current affected population.

DATES: This rule is effective May 3, 2012. The Director of the Federal Register has approved the incorporation by reference of certain publications listed in this rule as of May 3, 2012.

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–2011–0076 and are 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2011–0076 in the ''Keyword'' box, and then clicking ''Search.''

Viewing incorporation by reference material. You may inspect the material incorporated by reference at Lifesaving and Fire Safety Division (CG–5214), U.S. Coast Guard Headquarters, 2100 Second Street SW., Stop 7126, Washington, DC 20593–7126 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1394. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Brandi Baldwin, Lifesaving and Fire Safety Division (CG–5214), U.S. Coast Guard, telephone 202–372–1394, email *Brandi.A.Baldwin@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

ANSI American National Standards Institute
CFR Code of Federal Regulations
CGMIX Coast Guard Marine Information Exchange
DHS Department of Homeland Security
NEPA National Environmental Policy Act of 1969
NPRM Notice of proposed rulemaking
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PFD Personal flotation device
STP Standards Technical Panel
UL Underwriters Laboratories
USCG United States Coast Guard

II. Regulatory History

On March 30, 2011, the Coast Guard published a direct final rule entitled ''Inflatable Personal Flotation Devices'' in the **Federal Register**. 76 FR 17561. We received three submissions in response to the direct final rule: one supportive of the rulemaking generally, one which raised questions about a revision to one of the standards incorporated by reference, and one adverse comment related to the deletion of the words ''approved for use by adults only'' from the regulations. Because we received an adverse comment, on September 13, 2011, the Coast Guard withdrew the direct final rule in a notice of withdrawal. 76 FR 56294. On September 29, 2011, the Coast Guard issued a notice of proposed rulemaking (NPRM) proposing the same content as the direct final rule, with one change to update a version of an industry standard proposed for incorporation by reference. 76 FR 60405. The NPRM also summarized and sought comment on the comments received in response to the direct final rule.

III. Basis and Purpose

The Coast Guard is charged with establishing minimum safety standards, and procedures and tests required to measure conformance with those standards, for recreational vessels and associated equipment. *See* 46 U.S.C. 4302, and Homeland Security Delegation No. 0170.1, section II, paragraph (92)(b). Under this authority, in 1995, the Coast Guard promulgated regulations establishing structural and performance standards for inflatable recreational PFDs, and procedures and tests necessary for Coast Guard approval of PFDs meeting those standards. *See* 46 CFR part 160, subpart 160.076 (Inflatable Recreational Personal Flotation Devices); 60 FR 32836 (June 23, 1995). Subpart 160.076 incorporates by reference three Underwriters Laboratories (UL) Standards: UL 1180, ''Fully Inflatable Recreational Personal Flotation Devices'' (First Edition); UL 1191, ''Components for Personal Flotation Devices'' (Second Edition); and UL 1123, ''Marine Buoyant Devices'' (Fifth Edition). 46 CFR 160.076–11.

The editions of these UL Standards currently incorporated by reference into subpart 160.076 were current when the Coast Guard promulgated subpart 160.076 in 1995. However, UL has since published newer editions of these standards that the Coast Guard considers to contain technological and safety developments since 1995 that are important to codify in subpart 160.076. In this rule, the Coast Guard is updating the editions of the UL Standards incorporated by reference in subpart 160.076.

In this final rule, the Coast Guard is also facilitating and encouraging the continuation of the industry consensus standards development process by signaling that the Coast Guard will consider, as part of a possible future rulemaking, the appropriateness of inflatable PFDs for wearers under 16 years of age and any new industry consensus standard addressing inflatable PFDs for wearers under 16 years of age. This rulemaking, however, does not constitute approval of the use of inflatable PFDs for users under 16 years of age or a proposal for such approval, nor does it resolve any technical issues regarding use of inflatable PFDs by persons under 16 years of age.

IV. Discussion of Comments and Changes

The Coast Guard is revising 46 CFR part 160, subpart 160.076 to update the editions of the UL Standards incorporated by reference and to make necessary conforming changes resulting from incorporating the updated standards. The conforming changes include removing test methods, acceptance criteria, and other standards currently contained in subpart 160.076 that are made redundant by the newer editions of the UL Standards. The Coast Guard is also making minor, non-substantive editorial revisions to regulatory text in subpart 160.076. A complete discussion of these changes is available in the NPRM, published September 29, 2011. 76 FR 60405.

In response to the direct final rule, which included the same content as proposed in the NPRM, the Coast Guard received three submissions: one supportive of the rulemaking generally, one that raised questions about a revision to one of the standards incorporated by reference, and one adverse comment related to the deletion of the words ''approved for use by adults only'' from the regulations. The commenter who expressed support cited the removal of barriers to the development of innovative inflatable PFDs as leading to an expected improvement in the quality and variety of inflatable lifejackets available to the public. The Coast Guard appreciates the support.

The comment raising questions about a revision to one of the standards was resolved by a subsequent revision to UL 1191 following publication of the direct final rule which addressed that commenter's concern. In the NPRM, the Coast Guard proposed incorporating by reference the revised UL 1191.

The adverse comment expressed concern that deleting the words ''approved for use by adults only'' would create a perception that inflatable PFDs for youth would be available on the date the rule went into effect, would facilitate teens using existing inflatable PFDs, and would enable marketing of existing inflatable PFDs to youth.

The Coast Guard does not agree. This rulemaking does not affect the population for which inflatable PFDs are approved, and thus does not affect the availability, use, or marketing of existing PFDs to or by the youth population, or sizing requirements. As stated in the direct final rule, inflatable PFDs will not be approved for persons under 16 years of age until such time as the Coast Guard identifies, and incorporates by reference into Coast Guard regulations through a possible future rulemaking, a suitable industry standard that addresses the needs of younger wearers.

Since there is no prohibition on manufacturing or marketing any inflatable PFD that is not approved by the Coast Guard (provided that it is not marked as Coast Guard-approved), this final rule has no effect on what PFDs are available or to whom they are marketed. Moreover, as noted in the direct final rule and in the NPRM, the removal of the words ''approved for adults only'' has no substantive effect on Coast Guard approval of inflatable PFDs. UL Standard 1180 limits the approval of inflatable PFDs to persons of at least 16 years of age, and thus this final rule, which incorporates by reference a newer version of UL Standard 1180 (the Fourth Edition), continues to set the age limit for approved users of inflatable PFDs at 16 years of age. By removing the words ''approved for use by adults only,'' this final rule eliminates a regulatory redundancy specifying that inflatable PFDs approved by the Coast Guard are for use by adults only; after all, the

minimum age for use at 16 years of age is already specified in the standard incorporated by reference. Additionally, included within UL 1180 (both the currently-incorporated First Edition and the Fourth Edition incorporated by this final rule) is the marking and labeling required for all Coast Guard-approved inflatable PFDs. Specifically, both editions of UL 1180 require a marking stating that the device is ''USCG [a]pproved for use only on recreational boats by persons at least 16 years of age.'' As this marking appears on all currently approved inflatable PFDs, it is not reasonable to believe that these devices would be marketed to persons under 16 years of age.

The adverse comment also expressed concern that this rulemaking is premature in light of work that still needs to be done to evaluate sizing requirements for infant or child PFDs. While the Coast Guard agrees that there is benefit to conducting additional research into the anatomical requirements for children and infants, this rulemaking is not premature because it does not make any changes based on current research. As noted in the direct final rule and the NPRM, this rulemaking does not resolve technical issues regarding use of inflatable PFDs by persons under 16 years of age. In fact, this final rule removes a perceived regulatory barrier to completing the necessary research and taking the steps to develop appropriate design, construction and testing standards for inflatable PFDs for persons under 16 years of age. The UL Standards Technical Panel (STP) views the words ''approved for use by adults only'' as prohibiting the development of a standard regarding use of inflatable PFDs by persons under 16 years of age. By removing these words, the Coast Guard is signaling that we will consider, as part of a possible future rulemaking, the appropriateness of inflatable PFDs for persons under 16 years of age, and any new industry consensus standard addressing such inflatable PFDs. The Coast Guard recognizes that there are technical issues still to be resolved regarding use of inflatable PFDs by persons under 16 years of age, and this rulemaking demonstrates the Coast Guard's commitment to supporting industry and the STP in pursuing resolution of those issues.

In the NPRM, the Coast Guard sought comment on the comments to the direct final rule, as well as comments on the rule in general. In response to the NPRM, the Coast Guard received 181 submissions.

The majority of commenters misinterpreted this rulemaking as either proposing the approval or use of inflatable PFDs for persons under 16 years of age, or proposing PFD use requirements, generally. As described above, this rulemaking makes no substantive change to the current age or weight requirements for Coast Guard approval of inflatable PFDs or the population for which they are approved. Additionally, this rulemaking does not address any requirements for PFD use or wear. As such, the majority of comments are outside the scope of this rulemaking. If the Coast Guard identifies a suitable standard for the approval of inflatable PFDs for persons under 16 years of age, and initiates a separate rulemaking, the Coast Guard will consider the comments addressing use of inflatable PFDs submitted to this rulemaking's docket as part of that separate, future rulemaking.

Other commenters provided suggestions for revising PFD requirements generally, or revising carriage requirements, or expressed other concerns relating to PFDs generally. These comments also are beyond the scope of this rulemaking since this rulemaking only addresses Coast Guard approval of inflatable PFDs for persons 16 years of age and older.

The comments addressing the substance of this rule were generally supportive. Several of these commenters also provided direct responses to the adverse comment. The Coast Guard appreciates this support and agrees with the responses to the adverse comment for the same reasons the Coast Guard disagrees with the substance of the adverse comment, as discussed above.

One commenter suggested that the regulatory text should be revised to limit the use of inflatable PFDs to users ages 13 and up rather than leave the establishment of a lower age limit to the standards development organization. The Coast Guard does not agree. The Coast Guard is in fact establishing a lower age limit—which is 16 years of age—consistent with the current age limit. The Coast Guard is establishing this age limit not through specific regulatory text, but by incorporating by reference UL 1180 (Fourth Edition), which retains the age limit of 16 years of age in the currently-incorporated UL 1180 (First Edition).

Several commenters noted that the UL STP has already set the appropriate performance criteria to ensure that inflatable PFDs are safe, and other commenters indicated potential confusion over the role of the STP in developing industry consensus standards and the Coast Guard's role in incorporating those standards into its regulations. The Coast Guard agrees that the STP, of which the Coast Guard is a member, is the appropriate consensus body to develop these standards, and the Coast Guard supports its work. The Coast Guard clarifies that the STP, an independent, consensus industry group, is the forum for developing the appropriate standards for the design, construction, and testing of inflatable PFDs, and the Coast Guard encourages all interested parties to participate in the standards development process via the STP. Once the STP has developed and adopted any new standard, the Coast Guard will consider whether it is appropriate to incorporate the standard into Coast Guard rules. If so, the Coast Guard will initiate a rulemaking to solicit public input on its determination.

Some commenters encouraged the Coast Guard to set a new limit of 13 years of age to guide or limit the STP's work in developing a new industry consensus standard. This rulemaking does not address use of inflatable PFDs by persons under 16 years of age, and the Coast Guard does not agree that it should guide or limit the work of the STP, which is an independent, consensus industry group. The Coast Guard is only one of over 20 members of this group that is designed to have a balanced membership. The STP should develop and adopt a standard that the STP membership considers to meet the goals of the STP, and the Coast Guard will separately decide whether to incorporate the STP-adopted standard into Coast Guard regulations. In the event that the STP develops a standard which does not achieve all of the criteria that the Coast Guard determines—on its own or based on public comment during the rulemaking—are necessary to ensure the safety of these devices, the Coast Guard may impose additional restrictions via regulations to ensure public safety. Additionally, any restrictions on the STP's work, such as an age limit, could ultimately become or lead to a barrier to innovation.

Several commenters expressed concerns regarding development of consensus standards without sufficient research. The Coast Guard acknowledges these concerns but notes that development of consensus standards regarding inflatable PFDs is done by the STP. The Coast Guard considers the appropriateness of standards for incorporation into Coast Guard regulations, which could include consideration of the basis for the standard. As stated previously, although one of the purposes of this rulemaking is to allow for continued discussion of the technical matters relative to

development of a standard regarding use of inflatable PFDs for persons under 16 years of age, this rulemaking does not have any substantive effect on the requirements for Coast Guard approval of inflatable PFDs.

One commenter referred to Coast Guard approval as a ''seal of safety.'' The Coast Guard points out that this is not an accurate statement. Coast Guard approval does not indicate or affect which PFDs may be manufactured and sold to the public. Coast Guard approval of any lifesaving or marine equipment, including PFDs, is available only for, and applicable only to, that equipment required by U.S. or international regulations to be carried or installed onboard vessels. 46 CFR 2.75–1. Coast Guard approval simply indicates that the specified equipment satisfies U.S. carriage requirements, and does not in any way confer an endorsement of the product. Likewise, the absence of Coast Guard approval on a product does not imply that the product is unsafe; it only indicates that product has not been demonstrated to satisfy the relevant standards for approval. This final rule with updated standards does not affect inflatable PFDs previously approved by Coast Guard.

One commenter supported the use of additional laboratories in the testing of PFDs for approval. The Coast Guard clarifies that this rulemaking does not affect the requirements for recognition of independent labs in accordance with 46 CFR 159.010, but rather identifies a more suitable means for providing the public with the list of labs recognized for this purpose. Prior to the availability of a web-based searchable list of labs, such as that contained on the Coast Guard Marine Information Exchange (CGMIX) Web site, all recognized laboratories were listed directly in the regulatory text, and a rulemaking was required to update the list when the information changed. By replacing the list in the regulations with a reference to CGMIX, the public has access to the complete list, in real time, without the Coast Guard having to initiate a rulemaking to update the list. This approach is consistent with the other subparts in subchapter Q that address Coast Guard approval of marine equipment. *See, e.g.,* 45 CFR subparts 160.115, 160.132, 160.133, and 160.135.

One commenter indicated concern about the availability of technical specifications and standards being incorporated by reference. The Coast Guard notes that the direct final rule and NPRM provided a summary of the changes between the editions of the UL Standards currently contained in 46 CFR part 160, subpart 160.076 and the newer editions being incorporated by reference, in order to provide notice of the changes in technical specifications in Coast Guard regulations. The Coast Guard also notes that the direct final rule and the NPRM specified that the UL standards incorporated by reference in this rule are available from UL and provided necessary contact information.

One commenter pointed out typos in the NPRM preamble where 160.076 was mistakenly referred to as 160.067. The Coast Guard appreciates the input and confirms that those references apply to subpart 160.076.

In response to these comments, the Coast Guard made only non-substantive changes to format and to fix any typographical errors in the rule.

V. Incorporation by Reference

The Director of the Federal Register has approved the material in 46 CFR 160.076–11 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in paragraph (b) of § 160.076–11.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the 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 final rule has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the final rule has not been reviewed by the Office of Management and Budget.

We received no comments that would alter our assessment of impacts in the NPRM. We have found no additional data or information that would change our assessment of the impacts in the NPRM. We have adopted the analysis in the NPRM for this rule as final. A summary of the analysis follows:

The Coast Guard does not expect this rule to result in additional costs to industry, as manufacturers of Coast Guard-approved inflatable PFDs already follow the editions of the UL Standards being incorporated by reference into 46 CFR part 160, subpart 160.076 by this rule. The Coast Guard requires approval tests to be performed by an independent laboratory recognized by the Coast Guard under 46 CFR part 159, subpart 159.010. Currently, UL is the only recognized independent laboratory for inflatable PFDs, and UL requires manufacturers to conform to its most current standards, which are the editions being incorporated by reference into subpart 160.076. Additionally, UL offers a certification for those recreational inflatable PFDs that conform to UL's most current standards. The UL certification provides a product liability benefit to manufacturers, and obtaining the UL certification has become an industry custom for manufacturers of commercially-sold recreational inflatable PFDs.

As described above, industry is currently following the editions of the UL Standards incorporated by reference into subpart 160.076 in this rule, and PFD manufacturers will adhere to these standards regardless of whether this rule is promulgated. Therefore, this modification to 46 CFR part 160, subpart 160.076 is not expected to impose a burden on industry.

In addition, the Coast Guard does not expect that removing the language ''approved for use by adults only'' in 46 CFR 160.076–1 will have a substantive impact because the standards approved by this rulemaking retain with the current age and weight limitations. As discussed above in the ''Discussion of the Rule'' section in this preamble, the age and weight limitations found in editions of the UL Standards long incorporated in subpart 160.076 are retained in the newer editions of the UL Standards incorporated by reference into subpart 160.076. The remaining changes to subpart 160.076 are minor editorial updates. For additional details, please see the ''Discussion of the Rule'' section in the NPRM, published September 29, 2011. 76 FR 60405.

The primary benefit of this rule is the increase in regulatory efficiencies in the maritime community by harmonizing Coast Guard regulations in 46 CFR part 160, subpart 160.076 with current voluntary industry consensus standards. This rule will result in greater consistency between Coast Guard regulations and consensus standards and will reduce burdens on

manufacturers who currently have to maintain multiple editions of the UL Standards to comply with Coast Guard regulations, to use UL as an independent laboratory to perform required tests, and to obtain the UL certification. This rule will also result in better compliance with the National Technology Transfer and Advancement Act (NTTAA), which directs agencies to use voluntary consensus standards in their regulatory activities.

Because the rule harmonizes subpart 160.076 with existing UL Standards, ambiguity associated with inflatable PFD standards will be reduced. Harmonization of these standards is important to fulfill the Coast Guard's mission of establishing minimum safety standards, and procedures and tests required to measure conformance with those standards, for recreational vessels and associated equipment.

B. 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 people.

In the NPRM, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. We received no public comments that would alter our certification in the NPRM. We have found no additional data or information that would change our findings in the NPRM.

The Coast Guard estimates that this rule will not have an impact on small entities. As described in the ''Regulatory Planning and Review'' subsection, we do not expect this rule to result in additional costs to industry. However, this rule will improve efficiency by providing consistency between Coast Guard regulations and UL Standards. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy action of the Coast Guard.

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).

D. 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).

E. Federalism

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

F. 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.

G. 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.

H. Civil Justice Reform

This rule meets the 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.

I. 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 will not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. 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.

K. 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.

L. Technical Standards

The 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 uses the following voluntary consensus standards: UL 1123, ''UL Standard for Safety for Marine Buoyant Devices''; UL 1180, ''UL Standard for Safety for Fully Inflatable Recreational Personal Flotation Devices''; and UL 1191, ''UL Standard for Safety for Components for Personal Flotation Devices.'' The section that references

these standards and the locations where these standards are available are listed in 46 CFR 160.076–11.

M. 2010 Coast Guard Authorization Act Sec. 608 (46 U.S.C. 2118(a))

Section 608 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) adds new section 2118 to 46 U.S.C. Subtitle II (Vessels and Seamen), Chapter 21 (General). New section 2118(a) sets forth requirements for standards established for approved equipment required on vessels subject to 46 U.S.C. Subtitle II (Vessels and Seamen), Part B (Inspection and Regulation of Vessels). Those standards must be ''(1) based on performance using the best available technology that is economically achievable; and (2) operationally practical.'' *See* 46 U.S.C. 2118(a). This rule addresses inflatable recreational PFDs for Coast Guard approval that are required on vessels subject to 46 U.S.C. Subtitle II, Part B, and the Coast Guard has ensured that this rule satisfies the requirements of 46 U.S.C. 2118(a), as necessary.

N. 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 that this action is one of a category of actions that does not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under section 6(a) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48243, July 23, 2002). This rule involves inflatable PFD standards and falls under regulations concerning safety equipment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 160

Marine safety, Incorporation by reference, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 160 as follows:

PART 160—LIFESAVING EQUIPMENT

■ 1. The authority citation for part 160 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 160.076–1(b) to read as follows:

§ 160.076–1 Scope.

* * * * *

(b) Inflatable PFDs approved under this subpart rely entirely upon inflation for buoyancy.

§ 160.076–7 [Amended]

■ 3. Amend § 160.076–7(b) by adding the words ''(incorporated by reference, see § 160.076–11)'' after the words ''UL 1180''.

§ 160.076–9 [Amended]

■ 4. Amend § 160.076–9(b) by adding the words ''(incorporated by reference, see § 160.076–11)'' after the words ''UL 1180''.

■ 5. Amend § 160.076–11 as follows:

■ a. In paragraph (a), after the words ''one listed in'', remove the words ''paragraph (b) of''; and

■ b. Revise paragraph (b) to read as follows:

§ 160.076–11 Incorporation by reference.

* * * * *

(b) Underwriters Laboratories (UL) *Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062–2096 (Phone (847) 272–8800; Facsimile: (847) 272–8129; Web site: www.ul.com).*

(1) UL 1123, UL Standard for Safety for Marine Buoyant Devices, Seventh Edition including revisions through February 14, 2011, (dated October 1, 2008), (''UL 1123''), incorporation by reference approved for § 160.076–35.

(2) UL 1180, UL Standard for Safety for Fully Inflatable Recreational Personal Flotation Devices, Second Edition including revisions through December 3, 2010, (dated February 13, 2009), (''UL 1180''), incorporation by reference approved for §§ 160.076–7; 160.076–9; 160.076–21; 160.076–23; 160.076–25; 160.076–31; 160.076–37; and 160.076–39.

(3) UL 1191, UL Standard for Safety for Components for Personal Flotation Devices, Fourth Edition including revisions through August 24, 2011, (dated December 12, 2008), (''UL 1191''), incorporation by reference approved for §§ 160.076–21; 160.076–25; 160.076–29; and 160.076–31.

■ 6. Revise § 160.076–19 to read as follows:

§ 160.076–19 Recognized laboratories.

The approval and production oversight functions that this subpart requires to be conducted by a recognized laboratory must be conducted by an independent laboratory recognized by the Coast Guard under subpart 159.010 of part 159 of this chapter to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at *http://cgmix.uscg.mil.*

■ 7. Revise § 160.076–21 to read as follows:

§ 160.076–21 Component materials.

Each component material used in the manufacture of an inflatable PFD must—

(a) Meet the applicable requirements of subpart 164.019 of this chapter, UL 1191 and UL 1180 (incorporated by reference, see § 160.076–11), and this section; and

(b) Be of good quality and suitable for the purpose intended.

§ 160.076–23 [Amended]

■ 8. Amend § 160.076–23(a)(1) by adding the words ''(incorporated by reference, see § 160.076–11)'' after the words ''UL 1180''.

■ 9. Amend § 160.076–25 as follows:

■ a. In paragraph (a), after the words ''UL 1180'', add the words ''(incorporated by reference, see § 160.076–11)'';

■ b. Remove and reserve paragraph (c); and

■ c. Revise paragraph (d) to read as follows:

§ 160.076–25 Approval testing.

* * * * *

(d) Each PFD design must be visually examined for compliance with the construction and performance requirements of §§ 160.076–21 and 160.076–23 and UL 1180 and UL 1191 (incorporated by reference, see § 160.076–11).

* * * * *

■ 10. Amend § 160.076–29 as follows:

■ a. In paragraph (d), remove the words ''in accordance with UL 1180''; and

■ b. Revise paragraph (e)(4)(i) to read as follows:

§ 160.076–29 Production oversight.

* * * * *

(e) * * *

(4) * * *

(i) Samples must be selected from each lot of incoming material. Unless otherwise specified, Table 29.1 of UL 1191 (incorporated by reference, see § 160.076–11) prescribes the number of samples to select.

* * * * *

§ 160.076–31 [Amended]

■ 11. Amend § 160.076–31 as follows:

■ a. In paragraph (c)(1), remove the words ''The average and individual results of testing the minimum number of samples prescribed by § 160.076–25(d)(2)'' and add, in their place, the words ''The materials in each inflatable chamber''; and remove the words ''§ 160.076–21(b) and (c)'' and add, in their place, the words ''Table 29.1 of UL 1191 (incorporated by reference, see § 160.076–11)'';

■ b. In paragraph (c)(2), remove the words ''§ 160.076–21(d)(2)(iv). The results for each inflation chamber must be at least 90% of the results obtained in approval testing'' and add, in their place, the words ''Table 29.1 of UL 1191'';

■ c. In paragraph (c)(3), after the words ''UL 1180'', add the words ''(incorporated by reference, see § 160.076–11)'', and remove the number ''7.15'', and add, in its place, the number ''41'';

■ d. In paragraph (c)(4), after the words ''UL 1180 section'', remove the number ''7.16'', and add, in its place, the number ''42'';

■ e. In paragraph (c)(5), after the words ''UL 1180 section'', remove the words ''7.2.2–7.2.10, except 7.2.5'' and add, in their place, the number ''29''; and

■ f. In paragraph (c)(6), after the words ''UL 1180 section'', remove the words ''7.4.1 and .2'' and add, in their place, the number ''31''.

§ 160.076–35 [Amended]

■ 12. Amend § 160.076–35 by adding the words ''(incorporated by reference, see § 160.076–11)'' after the words ''UL 1123''.

§ 160.076–37 [Amended]

■ 13. Amend § 160.076–37(b) by removing the words ''section 11 of'' after the words ''specified in'' and by adding the words ''(incorporated by reference, see § 160.076–11)'' after the words ''UL 1180''.

§ 160.076–39 [Amended]

■ 14. Amend § 160.076–39 as follows:

■ a. In paragraph (a), remove the words ''section 10'' and add, in their place, the words ''(incorporated by reference, see § 160.076–11)''; and

■ b. Remove paragraph (e).

Dated: March 22, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2012–7791 Filed 4–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. DOT–OST–1996–1437]

RIN 2105–AD85

Privacy Act of 1974: Implementation of Exemptions; DOT/ALL 24—Departmental Office of Civil Rights System System of Records

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Final rule.

SUMMARY: The Department of Transportation is issuing a final rule to amend its regulations to exempt portions of a newly established or updated and reissued system of records titled, ''DOT/ALL 24—Departmental Office of Civil Rights System'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''DOT/ALL 24—Departmental Office of Civil Rights System'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective April 3, 2012.

FOR FURTHER INFORMATION CONTACT: Claire W. Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590 or *privacy@dot.gov* or (202) 366–8135.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation (DOT), Office of the Secretary (OST) published a notice of proposed rulemaking in the **Federal Register** (76 FR 71930) November 21, 2011, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records that is the subject of the notice of proposed rulemaking is the DOT/ALL 24—Departmental Office of Civil Rights System of Records. The DOT/ALL 24—Departmental Office of Civil Rights System system of records notice was published in the **Federal Register** (76 FR 71108) November 16, 2011, and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN). The notice of proposed rulemaking was inadvertently published under RIN 2105–AD11, and was entitled ''Maintenance of and Access to Records Pertaining to Individuals; Proposed Exemption.'' In addition, the notice of proposed rulemaking indicated that the proposed rule would add a new paragraph 8 to Part II.A of the Appendix to Part 10. The notice of proposed rulemaking should have stated that the proposed rule would add a new paragraph 9 to Part II.A of the Appendix to Part 10. The final rule has been revised accordingly.

Public Comments

DOT received no comments on the NPRM and no comments on the SORN.

Regulatory Analysis and Notices

This final rule is not a ''significant regulatory action'' within the meaning of Executive Order 12886. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this rule does not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals that is maintained by the Federal Government.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because it has no effect on Indian Tribal Governments, the funding and consultation requirements of Executive Order 13084 do not apply.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. I hereby certify that this rule does not have a significant economic impact on a substantial number of small entities.

This rule imposes no new information reporting or record keeping necessitating clearance by the Office of

Management and Budget. The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this document.

List of Subjects in 49 CFR Part 10

Privacy.

In consideration of the foregoing, DOT amends Part 10 of Title 49, Code of Federal Regulations, as follows:

PART 10—[AMENDED]

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

■ 2. The appendix to part 10 is amended by republishing Part II, A introductory text and adding paragraph 9 to read as follows:

Appendix to Part 10—Exemptions.

* * * * *

Part II. Specific Exemptions

A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes, in accordance 5 U.S.C. 552a(k)(2):

* * * * *

9. Departmental Office of Civil Rights System (DOCRS).

* * * * *

Issued in Washington, DC, on February 22, 2012.

Nitin Pradhan,

Chief Information Officer.

[FR Doc. 2012–7980 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120316196–2195–01]

RIN 0648–BB89

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Interim Action

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; interim measures; request for comments.

SUMMARY: This temporary rule implements interim Gulf of Maine (GOM) Atlantic cod (cod) management measures for the 2012 fishing year. This action is necessary to: Establish GOM cod Annual Catch Limits (ACLs); implement recreational management measures that will constrain catch to the recreational sub-ACL; and reduce overfishing occurring on GOM cod in anticipation of further action to end overfishing in fishing year 2013.

DATES: Effective May 1, 2012, until September 30, 2012; comments must be received by June 4, 2012.

ADDRESSES: You may submit comments on this document, identified by ''NOAA–NMFS–2012–0045,'' by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0045 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

• *Mail:* Submit written comments to Daniel Morris, Acting Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930.

• *Fax:* (978) 281–9135.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the supplemental environmental assessment (EA) prepared for this action by NMFS are available from Daniel Morris, Acting Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. The supplemental EA is accessible via the Internet at *http://www.nero.noaa.gov.* A copy of the most recent stock assessment for GOM cod is also accessible via the Internet at *http://www.nefsc.noaa.gov/groundfish.*

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, phone: 978–281–9104.

SUPPLEMENTARY INFORMATION:

Plain Language Executive Summary

A recent assessment of the amount of cod found in the GOM was finalized in January 2012. The results are substantially different from those from a similar examination conducted in 2008. The new assessment concludes that GOM cod are ''overfished,'' meaning there is a lower amount of fish than necessary to sustain the population over the long term. It also concludes that GOM cod are subject to ''overfishing,'' meaning fishing activities are removing too many fish from the sea to sustain the population. The required population and fishing-related removal levels are set for GOM cod under a fishery management plan developed by the New England Fishery Management Council (Council) in collaboration with NMFS. This plan is designed to satisfy requirements of the primary law governing U.S. fisheries—the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The new assessment indicates that increasing GOM cod to the rebuilding stock size target is not possible by 2014, even if no cod are harvested by fisheries between now and then. Based on the information in the new assessment, NMFS has determined that the GOM cod rebuilding program is not making adequate progress toward building the stock to the required size. NMFS has notified the Council of this finding. Based on this notification and in accordance with Magnuson-Stevens Act requirements, the Council must revisit the GOM cod rebuilding plan and revise it within the next two years so that the recovery effort is back on track. NMFS also advised the Council that there is some limited flexibility the agency may use to reduce, rather than end, overfishing on GOM cod for up to one year. The Council had originally intended to use the new assessment information and recommend measures for fishing year 2012 (May 1, 2012–April 30, 2013). However, the Council elected not to do so, based on concerns about the new assessment. Instead, the Council has asked NMFS to implement interim measures for the fishing year,

under its authorization to do so provided by section 305(c) of the Magnuson-Stevens Act.

In response to the Council's request, NMFS has decided that it is necessary and appropriate to implement this interim action to address overfishing of GOM cod using NMFS' authority in the Magnuson-Stevens Act (see *Justification for Interim Action* section later in this preamble for additional detail). In anticipation of implementing an interim rule, NMFS held several meetings with the Council, stakeholders, and interested parties. The objective of these meetings was to help identify fishing measures for the 2012 fishing year that will reduce overfishing. The measures implemented by this interim rule reduce GOM cod catch levels available to fishermen by approximately 17 percent from 2010 catch levels and 22 percent from 2011 catch levels, reduce the rate of fishing mortality by approximately 23 percent from the 2010 rate and approximately 4 percent from the 2011 rate, and therefore are consistent with Magnuson-Stevens Act requirements. These measures are based, in part, on the input from the meetings and are intended to reduce the magnitude of negative economic impact to fishery participants, fishery-dependent businesses, and coastal communities in New England in comparison to taking a more strict action to achieve reductions from 2010 catch levels by 84 percent and from 2011 catch levels by 85 percent that would be necessary to end overfishing.

This action implements catch levels and recreational management measures designed to reduce rather than end overfishing on the GOM cod stock in fishing year 2012. The Council intends to revisit the stock's rebuilding plan over the next two years and to develop measures to end overfishing on GOM cod starting in fishing year 2013 (May 1, 2013–April 30, 2014).

This interim rule implements a total GOM cod total annual catch limit (ACL) of 6,700 mt and divides this catch limit among the fishery as follows: Sectors, 3,618 mt, with an additional 471 mt as carryover; Common Pool, 81 mt; Recreational, 2,215 mt; State Waters, 253 mt; and Other Sub-component, 62 mt. This rule also implements a 19-inch (48.26-cm) minimum fish size for recreationally caught GOM cod and a recreational possession limit of 9 fish per angler. This rule is effective for 180 days.

NMFS is requesting comment on these interim measures in anticipation of extending the measures this fall to ensure measures are in place for the entire 2012 fishing year. Further, in response to public input, additional analysis is planned during 2012 to re-examine some components of the recent stock assessment. NMFS cannot predict how this additional analysis may influence what is known about the size and condition of the GOM cod population. It is possible that changes to measures may be necessary to respond to comments or new information when catch and management measures are extended this fall.

Additional detail is provided in the remainder of the preamble to this rule.

Background

The Northeast (NE) Multispecies Fishery Management Plan (FMP) specifies management measures for 16 fish species that occur in Federal waters off the New England and Mid-Atlantic coasts. Cod, along with haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and Atlantic wolffish are referred to as ''regulated species,'' in that they are subject to large mesh size requirements through the FMP. These regulated species are jointly managed by the Council and NMFS. Several of the regulated species are further subdivided into 19 separate stocks. These stocks, along with ocean pout, form the groundfish fishery complex managed under the FMP. There are two recognized stocks of cod in the U.S. portion of the North Atlantic: GOM and George's Bank.

Rebuilding Program and Stock Assessment Information

Amendment 13 to the FMP, developed by the Council and implemented by NMFS, established a program designed to rebuild the GOM cod stock from low population levels. This program, implemented in 2004 (69 FR 22906; April 27, 2004), was designed to rebuild the GOM cod stock in 10 years, by May 1, 2014.

Comprehensive assessments of the GOM cod stock were conducted in 2005, 2008, and most recently in December 2011 (published in January 2012). The 2008 assessment, conducted by NMFS' Northeast Fisheries Science Center (NEFSC) in collaboration with state agency scientists, academia, and industry-hired consultants, and externally peer-reviewed by the Center for Independent Experts, indicated that the GOM cod stock was likely to rebuild by 2014, consistent with the rebuilding plan.

The new assessment, conducted through a similar collaborative and peer-review process, provided a new and significantly revised scientific understanding of the status of GOM cod. The most recent assessment indicates that rebuilding the stock to the biomass target of 61,218 mt would not be possible by 2014 even in the absence of all fishing mortality. Additionally, this assessment indicates that the stock is subject to continued overfishing and is overfished. Because the most recent assessment provides a substantially changed perspective for the status of GOM cod, the inability to adequately rebuild the stock is the fault of neither the Council nor fishery participants.

Additional detail on all the GOM stock assessments, including the most recent assessment results, are available on the NEFSC stock assessment-related Web site (*http://www.nefsc.noaa.gov/nefsc/saw/*) and are not further summarized here.

Implications of New Assessment Information

Based on the new assessment, the fishing mortality rate (F) on GOM cod in 2010 was 1.14. Based on the Council's Plan Development Team (PDT) analysis, the current projection indicates F for 2011 is 0.92. The overfishing threshold calculated by the assessment is an F of 0.2; thus to end overfishing, the F rate would need to be reduced by at least 82 percent from the 2010 rate and 78 percent from the 2011 rate to be at or below the overfishing threshold.

The mechanism for reducing F is to reduce catch. To achieve the level of reduction in F to end overfishing immediately (i.e., F = 0.2 or less), the assessment calculated that total catch limit for fishing year 2012 would need to be 1,313 mt, and stock biomass would increase to 11,463 mt in 2013. Further, the Council established in Amendment 13 that it would set an F rate at 75 percent of the overfishing threshold of 0.2 for an F of 0.15. This 0.15 F rate would result in a catch limit of 1,001 mt in fishing year 2012, and stock biomass would increase to 11,838 mt in 2013. Reductions in catch limits of this magnitude would end overfishing; however, this would have significant negative economic impacts to fishery participants, fishing-related industries in New England, and coastal communities in the region.

Council Process for Fishing Year 2012 Measures

The Council was aware that the new assessment for GOM cod was being conducted in December 2011, and that final results from the assessment would be available in early 2012. Typically, the Council takes final action on recommendations for the subsequent fishing year in November of the

preceding year (i.e., November 2011 for 2012 measures). Because the timing of the GOM cod assessment complicated the normal process used, the Council had included a range of potential catch levels in its analysis of Framework Adjustment 47 to the FMP (FW47). The Council took final action on FW47 in November 2011. The Council intended to have its PDT and Scientific and Statistical Committee (SSC) review the assessment results in early 2012 to provide advice for a GOM cod Acceptable Biological Catch (ABC) for fishing year 2012. Subsequently, the Council expected to finalize GOM cod catch recommendations to NMFS for inclusion in the FW47 rulemaking.

However, as the preliminary GOM cod assessment results became available, the Council grew concerned about the assessment as well as the potentially low catch levels that appeared to be required for the 2012 fishing year. It was at this point that NMFS began a detailed examination of potential options for the fishing year and concurrently began meeting with the Council and stakeholders.

Flexibility To Reduce But Not Immediately End Overfishing

When the assessment results were finalized in late January 2012, NMFS notified the Council, as required by section 304(e)(7) of the Magnuson-Stevens Act, that the GOM cod rebuilding program is not making adequate progress toward rebuilding the stock based on the new and significantly revised scientific understanding of the stock's status. Based on this determination and subsequent notification to the Council, NMFS has determined the Secretary of Commerce (Secretary) may take interim action for up to one year under section 304 (e)(6) of the Magnuson-Stevens Act to reduce rather than end overfishing on GOM cod while the Council revisits the rebuilding program. Measures to reduce rather than end overfishing must, at a minimum, maintain the current GOM cod stock size and preferably, should result in an increase in the stock size. Further, the reduction in overfishing must be appreciable.

In addition, to invoke the flexibility of section 304(e)(6) of the Magnuson-Stevens Act for fishing year 2012, the Council must be in the process of revising the GOM cod rebuilding program for completion within 2 years for implementation no later than May 1, 2014. The Council has stated its intent to address the rebuilding needs and NMFS anticipates collaborating with the Council on the development of stock-rebuilding measures over the months to come.

The Secretary may implement emergency or interim measures for only up to 1 year under the emergency action authority provided by section 305(c) of the Magnuson-Stevens Act. The Council is expected to develop measures to end overfishing beginning with the 2013 fishing year, which starts May 1, 2013.

Council Recommendation for Fishing Year 2012

Upon receiving the preliminary GOM cod assessment results in early 2012, the Council asked the SSC not to recommend an ABC in part due to concerns about the assessment. Subsequently, the Council did not recommend ABC or ACLs in FW 47 for GOM cod. Instead, the Council, relying on the notification and flexibility measures previously described, voted to request of NMFS that it implement an interim action to reduce rather than end overfishing for fishing year 2012. In making this request, the Council recommended that NMFS implement interim GOM cod catch and recreational fishery management measures for the 2012 fishing year. The Council recommended three specific items to NMFS for consideration in developing and implementing interim measures:

- Setting a total GOM cod ACL in a 6,700 to 7,500 mt range;
- Modifying the recreational management measures with particular emphasis on reductions in the possession/bag limit and minimum fish size to reduce discards; and,
- Re-opening several existing closed areas: Nantucket Lightship Closed Area year round, Closed Area I from 1 May 1–February 15, Closed Area II south of 41°50′ May 1 through February to selective fishing gear, and a portion of the both the Western GOM Closed Area and Cashes Ledge Closed Area year round.

Interim 2012 Fishing Measures

After considering the Council recommendations and public input from outreach meetings, NMFS implements, through this interim action, the following measures for the commercial and recreational GOM cod fisheries for fishing year 2012. These measures, based on a total GOM cod ACL of 6,700 mt, are expected to reduce overfishing. The assessment found an F of 1.14 for 2010 and PDT-conducted analysis has projected an F of 0.92 for 2011. The 6,700 mt catch limit established for this rule is expected to produce an F of 0.879, or a reduction in F of 23 percent from 2010 and 4 percent from 2011. Fishing under these measures in fishing year 2012 is expected to increase spawning stock biomass by 19 percent, from 8,618 mt in 2012, to 10,235 mt in 2013.

As noted above, if overfishing were ended in 2012 based on an F rate of 0.2, the ACL would be 1,313 mt, and the 2013 stock biomass would increase to 11,463 mt. If the fishery were closed in fishing year 2012, the 2013 stock biomass would increase to 13,073. Under the Council's recommended upper bound ACL of 7,500 mt for fishing year 2012, the 2013 stock biomass would increase to 9,564 mt, but the F rate would increase to 1.031 (i.e., overfishing would not be reduced).

There are several compelling reasons why NMFS is implementing an ACL of 6,700 mt as opposed to a higher or lower limit. Fishing at this level is likely to reduce overfishing to an appreciable degree while allowing meaningful mitigation of negative impacts for fishing year 2012 resulting from the reduced ACL while the Council develops revisions to the GOM cod rebuilding program. Fishing at 6,700 mt in fishing year 2012 is projected to allow growth in the GOM cod biomass and should not significantly influence the fishing year 2013 catch level. The magnitude of reduction needed for fishing year 2013 is so substantial that it is unlikely that the 2013 ACL will be greater than 3,000 mt. This would be true even if the fishing year 2012 ACL were set at a much lower level.

The 6,700 mt ACL is consistent with National Standard 8, which requires fishing measures to minimize adverse economic impacts on fishing communities while remaining consistent with conservation requirements. Adopting a measure effectively eliminating the GOM cod harvest for 2012 could permanently remove the smaller fishing operations from the fishery, without a significant corresponding benefit (e.g., in terms of increasing stock biomass). Setting the ACL at this level is further justified as an equitable measure as it recognizes that the need for more severe reductions of GOM cod fishing mortality is not the result of a failure of the FMP or the fishing industry in complying with FMP measures, but rather it is the result of a sudden change in the understanding of the GOM cod stock status. In light of this sudden change in the assessment, this fishing level is particularly needed to help mitigate the negative economic impacts in the transition year before more restrictive measures having more substantial adverse impacts are necessary for the 2013 fishing year.

Rationale for the agency's decision not to adopt some recommendations is

also provided within each following sub-section.

Annual Catch Limits (ACLs)

This action implements a total GOM cod ACL of 6,700 mt for fishing year 2012. Normally, the sub-ACL allocations are derived from the ABC; however, for the interim action no ABC has been set by the Council. To determine sub-ACLs, NMFS calculated a proxy for ABC from the ACL of 6,700 mt. This results in a proxy ABC value of 7,066 mt. Under the Council's procedures for setting ACLs, the ACL is set 5 percent lower for commercial fisheries and 7 percent lower for the recreational fishery to offset management uncertainty. However, instead of using the FMP-established distribution percentages for calculating the sub-ACLs from ABC, this action modifies the distribution percentages by reducing State Waters and Other Sub-component catch levels, and shifting tonnage from those sub-components to the commercial fishery. The revised sub-sector ACLs are shown in Table 1.

TABLE 1—GOM COD FISHING YEAR 2012 SUB-ACLS, IN METRIC TONS (MT)

Total ACL	Interim sub-ACLs (mt)					
	Commercial fishery			Recreational	State waters	Other sub-component
	Total	Sectors	Common pool			
6,700	4,170	4,089 potential total, 3,618 sub-ACL, (471 as carryover)	81	2,215	253	62

Consistent with the FMP, the recreational fishery sub-ACL was calculated first. The remaining tonnage was apportioned across the four commercial fishery sub-components: Sectors, Common Pool, State Waters, and the Other Sub-component.

The adjustment in commercial catch levels was done to help ensure that sector carryover, if maximized to 10 percent from fishing year 2011 and fully utilized in fishing year 2012, would not cause fishing to increase above the projected fishing year 2011 level. Neither the State Waters nor Other Sub-component categories were fully utilized in fishing year 2010, nor are they projected to be fully harvested in fishing year 2011. NMFS has moved tonnage from these two categories to the Commercial (Sector and Common Pool) sub-ACLs to provide a buffer for sector carryover from fishing year 2011. The catch from state waters was approximately 250 mt, and catch attributed to the other sub-component category was approximately 60 mt in fishing year 2010. It is expected that these sub-sectors will harvest around that same amount in fishing year 2011. NMFS has reduced the catch components for the two categories from 468 to 253 mt (State Waters) and 234 to 62 mt (Other Sub-component) and reapportioned the 387 mt derived from these fisheries to the Total Commercial ACL. The Commercial ACL is then subdivided to the sub-ACLs for the sector and the common pool fisheries.

Incidental Catch Total Allowable Catches (TACs) and Allocations to Special Management Programs

Incidental catch TACs are specified for certain stocks of concern (i.e., stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (i.e., special access programs and the Regular B Days-At-Sea (DAS) Program), in order to limit the catch of these stocks in these programs. The Incidental Catch TAC for each stock is based on the Common Pool sub-ACL and is distributed to each special management program using a predetermined formula specified in the implementing regulations for the FMP. Any catch on a trip that ends on a Category B DAS (either Regular or Reserve B DAS) is attributed to the Incidental Catch TAC for the pertinent stock. Catch on a trip that starts under a Category B DAS and then flips to a Category A DAS is attributed to the Common Pool sub-ACL.

The incidental catch TAC for GOM cod is 1 percent of the common pool sub-ACL. For fishing year 2012, the incidental catch TAC is 0.81 mt, and 100 percent of this incidental catch TAC is allocated to the Regular B DAS Program.

Common Pool Trimester TACs

Beginning in fishing year 2012, Common Pool trimester TACs outlined in Amendment 16 become effective. The Common Pool sub-ACL for each stock will be divided into trimester TACs at the start of the fishing year. The percentage of each sub-ACL allocated to each trimester was determined in Amendment 16. The regulations require that once 90 percent of an applicable trimester TAC is caught, the area where 90 percent of the catch for the pertinent stock occurred will be closed. The area closure will apply to all common pool vessels fishing with gear capable of catching the pertinent stock. Any overages or underages of the trimester TAC in Trimester 1 or Trimester 2 will be applied to the next trimester (e.g., any remaining portion of the Trimester 1 TAC will be added to the Trimester 2 TAC). Any overage of the total sub-ACL will be deducted from the following fishing year's Common Pool sub-ACL for that stock. Uncaught portions of the Trimester 3 TAC will not be carried over into the following fishing year.

Table 2 contains the fishing year 2012 trimester TACs for GOM cod.

TABLE 2—FISHING YEAR 2012 GOM COD COMMON POOL TRIMESTER TACS

Percentage of sub-ACL Allocated to Each Trimester			2012 Trimester TACs (mt)		
Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3
27	36	37	22	29	30

The fishing year 2012 sector rosters will not be finalized until May 1, 2012. Therefore, the allocation of the Commercial ACL between the Common Pool and Sector sub-ACLs for GOM cod may change due to changes in the sector rosters. An updated Sector sub-ACL, Common Pool sub-ACL, incidental catch TAC, and trimester TACs for GOM

cod will be published in a subsequent adjustment rule, if necessary, based on the final fishing year 2012 sector rosters as of May 1, 2012.

Sector Carryover

NMFS weighed several options for addressing GOM cod sector carryover. NMFS considered providing less than the 10-percent carryover, as well as options that would have allowed carryover to occur above and beyond the total fishery ACL. However, the only viable options to ensure that the potential fishing year 2012 catch would not increase overfishing in light of the new assessment were scenarios that kept all potential catch, both sub-ACLs and carryover, within the total fishery ACL of 6,700 mt. Allowing catch to exceed 6,700 mt could cause overfishing to occur at levels equal to or higher than the overfishing level in fishing year 2011. Thus, the potential fishing year 2011 sector carryover of 471 mt is being allowed in conjunction with the Sector sub-ACL of 3,618 mt. The sub-ACL of 3,618 mt will be used to calculate Sector Annual Catch Entitlement (ACE). Overall, this is an 83-mt reduction from the Sector sub-ACL of 3,701 mt discussed publically at the February 10, 2012, GOM Cod Working Group meeting in Portsmouth, NH. If the sector sub-ACL and full 10-percent carryover are caught in fishing year 2012, the total sector catch will be 4,089 mt. By constraining potential carryover catch within the total fishery ACL, overfishing will be reduced in fishing year 2012 from 2011 levels. If all recreational and commercial fishery components, including a potential sector harvest of 4,089 mt (i.e., sub-ACL plus 10-percent carryover) catch their full allocations, the total catch will be 6,700 mt under this apportionment scheme.

Consistent with the existing regulations, accountability measures (AMs) for the State Waters and Other Sub-component sub-ACLs are implemented only if the total ACL (i.e., 6,700 mt) is exceeded and the State Waters and/or the Other Sub-component sub-ACLs are also exceeded. If the State Waters and/or Other Sub-component sub-ACLs are exceeded and the total ACL is not, no AMs are implemented.

Recreational Fishery Management Measures

As indicated in Table 1, the recreational sub-ACL for fishing year 2012 is 2,215 mt. NMFS is reducing the recreational GOM cod minimum fish size from 24 to 19 inches (60.96 to 48.26 cm) and is reducing the per-angler possession limit from 10 to 9 fish. Preliminary analysis indicates that these measures will sufficiently reduce recreational catch to ensure that the revised recreational sub-ACL of 2,215 mt will not be exceeded in fishing year 2012. NMFS engaged the Council's Recreational Advisory Panel (RAP) and recreational fishery stakeholders during development of these measures in a public meeting held February 10, 2012, in Portsmouth, NH. These measures were supported for use by the Council's RAP. Most stakeholders present at the meeting also supported these measures for fishing year 2012.

It may seem counterintuitive that reducing the minimum fish size will reduce total catch. The most recent stock assessment assumes that all recreational discarded cod die—a discard mortality assumption of 100 percent. The reduction in minimum fish size is expected to increase overall effort by a minor amount; however, analysis indicates that anglers will likely have higher success in catching legal-sized fish more quickly, so that there will theoretically be fewer discarded fish within trips. There is also a lower average fish weight with the lower minimum fish size that has some effect in reducing the total recreational landings amount.

Anglers are reminded that the per-person limit is a possession limit. The act of ''high-grading,'' or discarding previously captured smaller fish for larger fish is strongly discouraged, as it would undermine the management program.

Potential Changes to Recreational Measures in 6 Months

The interim measures implemented by this rule were developed through a new analytical model. The theory of its operation is as previously outlined and is sound. However, the model, its underlying assumptions, and output have not yet been subject to the type of rigorous review typically used before providing advice for management. To be clear, this model is new, untested, and not yet peer-reviewed. There exists some uncertainty about the effectiveness of the measures produced, particularly if anglers ''high grade'' to keep larger cod. The previously used approach for deriving recreational management measures did not consider discard mortality of 100 percent. NMFS has determined that using this new model in the limited, short-term context of this interim rule is appropriate given the caveats discussed in this preamble.

Prior to the expiration of this temporary rule, NMFS intends to rigorously review the new model and will work to have some level of external review of the model, the underlying assumptions, and the output generated during the period between issuing these interim measures and the renewal of interim measures after 180 days. Recreational measures will be revisited once the model has been peer-reviewed to ensure that the measures are effective in meeting the catch reductions necessary for the 2012 fishing year (i.e., to constrain catch within the recreational sub-ACL).

In addition, it is possible that NMFS will re-evaluate or otherwise re-visit the 100-percent discard mortality assumption utilized in the most recent assessment during the course of the 2012 fishing year. The discard mortality assumption used in the assessment is also used to monitor catch in the fishery. If the assumed discard mortality of recreationally caught fish were to change from 100 percent to a lower value, the effectiveness of a reduced minimum fish size could be less.

Based on these ongoing examinations, it is possible that NMFS may need to include changes to recreational management measures when these interim measures are extended after 180 days in October 2012. There are two possible outcomes:

- The modeling approach is valid and appropriate and the discard mortality assumption is unchanged.

In this scenario, it is unlikely that any changes to the interim recreational measures implemented by this rule would be necessary.

- The model-generated advice is found to be inappropriate to achieve the required reduction and/or the discard mortality assumption is changed to a level less than 100 percent.

Under this scenario, it is likely that additional, more restrictive measures would be necessary for the second half of the fishing year—essentially for April 16–30, 2013, due to the GOM recreational cod closure currently in place from November 1–April 15. This is the more problematic scenario, as fishing will have already occurred for 6 months and more restrictive measures would be implemented mid-year. NMFS anticipates working closely with the Council's RAP and the recreational fishing industry in developing any mid-year changes to reduce catch, should such measures become necessary. Such measures would likely include at least some closure of the fishery in April 2013, and/or increases to minimum fish size, and/or reduction in possession limits. There is also the potential for changes in our understanding of GOM cod status. See the *6-month renewal of interim measures* section for additional detail.

Closed Areas

NMFS is not taking action at this time to re-open those closed areas as requested by the Council. NMFS finds that there are several compelling reasons for not modifying these closed areas through this interim or other emergency action. While the agency did receive some input supporting the Council's request, the majority of comments received through correspondence and at the February 10, 2012, GOM Cod Working Group meeting requested that NMFS leave in place the existing closed areas.

The process for evaluating the biological impacts to fish stocks, particularly GOM cod, as well as the habitat protection requirements outlined in the Magnuson-Stevens Act, involves complex analyses. Such analyses could not be completed in a thorough, deliberative, and transparent manner in the time period NMFS had to develop and implement the interim measures contained in this rule.

The Council continues to develop a comprehensive omnibus amendment process to address the Essential Fish Habitat requirements of the Magnuson-Stevens Act. This process is undertaking analysis that contemplates modification of many of the closed areas. This process is tentatively scheduled to be completed in 2013. In addition, the PDT continues to discuss and analyze stock-level impacts of re-opening closed areas. It is appropriate to examine potential changes to the closed areas through these deliberative Council processes to ensure that analysis to support any changes is both robust and conducted in a transparent manner.

6-Month Renewal of Interim Measures

NMFS' interim authority is available for up to 180 days in an initial action and may be extended up to an additional 186 days by a subsequent rule. This system provides for a full year of interim measures, when necessary. NMFS will renew interim measures in October 2012 to ensure coverage of the entire 2012 fishing year. We are accepting comment on these initial interim measures for consideration on the extension to be issued this fall.

It is expected that additional information regarding calendar and fishing year 2011 catch will become available between now and the 6-month renewal of this action. In addition, several concurrent processes are underway to more closely examine components of the most recent GOM stock assessment. These include the assumed discard mortality rate, analysis of industry catch-per-unit-effort data, further development and potential incorporation of Marine Recreational Information Program data, and potentially other components of the assessment. Additional recreational analysis may be conducted pending review of the modeling approach used to develop measures for this rule. It is possible that any one or several of these ongoing efforts may provide additional information on the status of GOM cod and/or the appropriateness of the measures being implemented by this initial set of interim measures. NMFS will work closely with the Council, public, and interested parties to openly discuss potential catch-level or management measure changes necessary for the second half of fishing year 2012.

It is not possible to predict whether changes, either more liberal or more constraining, may become necessary to reduce overfishing and/or to ensure ACLs are not likely to be exceeded; however, as previously stated, the current situation for GOM cod is highly unusual. We remain committed to providing as much information as possible as quickly as practical so that business and fishing-related operations can be planned.

Justification for Interim Action

The Magnuson-Stevens Act authorizes the Secretary to act if (1) the Secretary finds that an emergency involving a fishery exists; or (2) the Secretary finds that interim measures are needed to reduce overfishing in any fishery; or (3) if the Council finds one of those factors exists and requests that the Secretary act. See section 305 of the Magnuson-Stevens Act. Where such circumstances exist, the Secretary may promulgate emergency rules or interim measures ''to address the emergency or overfishing.'' 16 U.S.C. 1855(c)(1) and (2). The Secretary has delegated this authority to NMFS. Further, NMFS has issued guidance defining when ''an emergency'' involving a fishery exists. 62 FR 44421; August 21, 1997. This guidance defines an emergency as a situation that (1) arose from recent, unforeseen events, (2) presents a serious conservation problem in the fishery, and (3) can be addressed through interim emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and the deliberative consideration of the impacts on participants to the same extent as would be expected under the formal rulemaking process. Under the statute and guidance, the rationale for issuing these emergency and interim regulations is as follows:

The new GOM cod stock assessment indicates that the stock is overfished, is subject to overfishing, and is not making adequate progress toward the rebuilding objective. Neither NMFS nor the Council could have foreseen the GOM cod stock assessment's recent findings, because the previous stock assessment suggested that GOM cod was recovering according to the schedule set out in a prior rebuilding plan. The most recent stock assessment represents a significant and unforeseen change in scientific understanding of the GOM cod stock, and the final stock assessment did not become available to NMFS and the Council until late January 2012.

Both NMFS and the Council agree with the stock assessment's findings. Thus, both NMFS and the Council have determined that overfishing is occurring on GOM cod. Further, based on this information, the Council has found that interim measures are needed to reduce overfishing in the GOM cod fishery, and has requested that NMFS issue emergency regulations designed to reduce overfishing of GOM cod. Accordingly, under the Magnuson-Stevens Act, NMFS, acting by delegation for the Secretary under the previously outlined provisions, is issuing emergency interim measures designed to address the emergency situation concerning the overfishing of GOM cod.

Classification

The Acting Administrator, Northeast Region, NMFS, determined that this interim rule is necessary for the conservation and management of the GOM cod fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Pursuant to 5 U.S.C. 553(b)(B) and 553(d)(3), the Assistant Administrator finds good cause to waive prior notice and an opportunity for public comment on this action along with the 30-day delay in effectiveness, as notice and comment and delayed effectiveness are impracticable and contrary to the public interest. There has been insufficient time to conduct notice-and-comment rulemaking for this action, which is necessary due to recent, unforeseen events; namely, the most recent GOM cod stock analysis indicates that despite the management measures in place, GOM cod is currently overfished and undergoing overfishing. This analysis, which came out in January 2012, has complicated the timing and process for setting catch levels and management measures that normally occurs. As a result of these changes, NMFS has had to quickly conduct substantial and complex analyses to develop rulemaking to ensure that measures to reduce overfishing would be in place by

the start of the fishing year on May 1, 2012. These timing complications were unavoidable. The immediate benefits of the interim measures, implemented by this rule, the mitigation of substantial negative economic impacts to fishery participants, associated businesses, and coastal communities that depend on GOM cod-related revenues, outweigh the value of formal advance notice and public comment.

Though notice-and-comment rulemaking is not being conducted, substantial outreach discussions have occurred with the Council, public, and interested parties to explore what measures should be included in this interim action. NMFS has shared a great deal of information with these groups, and has received input on the interim measures from a wide range of stakeholders and interested parties. NMFS requests comment on these interim measures in anticipation of extending the measures this fall to ensure management measures are in place for the entire fishing year.

The normal process for establishing ACLs for GOM cod was substantially impacted for the 2012 fishing year. In a typical process, the Council receives new scientific information by October and decisions on ACLs and any necessary management measures changes would be voted on by the Council in November. By late December/early January of the following year, the Council's recommendations are forwarded to NMFS for rulemaking. The Council would typically forward with its recommendation the comprehensive analyses necessary to satisfy all applicable laws, including the National Environmental Policy Act (NEPA). Notice-and-comment rulemaking would be conducted by NMFS through the spring months and measures would be implemented for the May 1 start of the fishing year.

For the cycle leading into fishing year 2012, the Council and public knew that a new stock assessment for GOM cod would be conducted in December 2011. The Council acknowledged that the assessment could differ from previous management advice and result in a wide range of catch recommendations; thus, it recommended a range of ACLs and other measures for NMFS' consideration in FW47 for implementation beginning on May 1, 2012. The Council had intended to receive the new assessment results in January 2012, evaluate this new information quickly, and finalize its catch and management measures recommendations to NMFS for the 2012 fishing year at its February 1, 2012, meeting. This schedule would allow the Council to utilize the most recent stock assessment information in its recommendation to NMFS.

As stated in the preamble of this rule, the new assessment markedly changed the understanding of the GOM cod stock. It is overfished and subject to overfishing, the rebuilding plan is not making adequate progress, and the stock biomass is at a much lower level than previously believed. The magnitude of change in our understanding of the GOM cod stock was unforeseen. The previous assessment, conducted in 2008, indicated that the GOM cod stock was growing and expected to be rebuilt by 2014. The new assessment directly contradicts those findings and indicates rebuilding will not be achieved by 2014.

The GOM cod catch levels that would result from using the new assessment information, if applied by the Council to end overfishing, would result in very low catch levels for the 2012 fishing year. In light of the substantially changed stock information, the magnitude of negative economic impacts associated with very low catch levels, and a number of assessment-related topics the Council would like to explore further, the Council elected not to formally recommend a specific catch level to NMFS for the 2012 GOM cod fishery. Instead, in understanding that NMFS could utilize limited authority to reduce, but not end, overfishing, in the interim while the Council revisits the GOM cod rebuilding program design, the Council recommended a range of catch and requested NMFS implement interim measures for the 2012 fishing year based on these recommendations. This specific request to the Secretary to act under section 305(c) of the Magnuson-Stevens Act is consistent with NMFS policy guidelines for the use of emergency rules issued August 21, 1997 (62 FR 44421), as it is a request from the Council to address an emergency situation. Had the Council not taken such action, it would have been compelled to recommend very low catch levels for the 2012 fishing year that in turn would have substantial negative economic impacts to the fishery participants and coastal communities in New England that rely on fishing-related revenues. The emergency, in the context of the Council's request, is for NMFS to apply the interim rulemaking provisions of section 305(c) to avoid the significant negative economic impacts to fishery participants and communities that would result from ending overfishing at the beginning of fishing year 2012 (i.e., May 1, 2012).

NMFS received the Council's recommended catch range of 6,700 to 7,500 mt at the February 1, 2012 meeting. NMFS began analyzing this range along with recreational measures for consistency with the requirement to reduce overfishing, and to determine which catch levels would be appropriate within this range. In conjunction with the Council, NMFS held a GOM Cod Working Group meeting on February 10, 2012, in Portsmouth, NH. This group was chaired by the Acting Assistant Administrator for Fisheries. At this meeting, NMFS indicated that fishing at a level higher than 6,700 mt would likely not reduce overfishing on the GOM cod stock. NMFS discussed potential sub-ACLs that would result from fishing at 6,700 mt for the year as well as providing potential changes to the recreational management measures for discussion, should this catch level eventually be implemented. Though no formal recommendations were sought or provided, a great deal of public input was received during this meeting and through correspondence after the meeting. This input was very helpful for NMFS as the interim measures were further developed.

The typical analytical process that is used to inform development of catch and recreational measures spans from late August through late December. Because of the introduction of new and substantially changed GOM cod stock information, these analyses had to be conducted by NMFS within a few weeks' time to ensure that rulemaking-related analyses and development could be conducted and concluded in sufficient time for the start of the fishing year (May 1). Though the work and discussion were conducted as quickly as possible, it was not possible to do so in a manner that provided sufficient time for notice-and-comment rulemaking. NMFS is relying on the collaborative development process for the measures within this interim rule to have provided a meaningful opportunity to engage with the affected public prior to issuing interim measures. Although this rule is becoming effective on May 1, based on the emergency precipitating it, NMFS is allowing the public an opportunity to comment on the measure for 60 days after the rule becomes published. NMFS will address public comments, including any necessary changes, before these interim measures are renewed in 6 months (October 2012).

Similarly, NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the full 30-day delay in effectiveness for this rule, and to have it become effective on May 1, 2012. That date is the beginning of the fishing year for GOM cod. If this rule does not become

effective on May 1, 2012, then the previous ACL and AMs would remain in effect, with the result that overfishing would not be reduced. These measures would increase overfishing on the GOM cod stock and, as such, are inconsistent with the Magnuson-Stevens Act, the stated intent of the GOM cod rebuilding program, and the FMP. Moreover, failing to have the rule effective on May 1, 2012, may lead to confusion in the fishing community as to what regulations govern the harvest of GOM cod. Thus, the 30-day delay is impracticable and contrary to the public interest, and NMFS waives the requirement and makes this rule effective on May 1, 2012.

NMFS has consulted with the Office of Information and Regulatory Affairs (OIRA) and due to the circumstances described above this action is exempt from review under Executive Order 12866.

Under section 608 of the Regulatory Flexibility Act, an agency may waive the requirement to perform a regulatory flexibility analysis for a rule where the agency finds that the ''rule is being promulgated in response to an emergency that makes compliance or timely compliance with [the regulatory flexibility analysis requirements] impracticable.'' 5 U.S.C. 608. As discussed in the preamble to this interim rule, and as elaborated in this classification section, NMFS takes this action to address an emergency situation in the GOM cod fishery. Undertaking a regulatory flexibility analysis would delay this action and put the GOM cod and any small businesses that depend on it at further risk. Because the nature of this emergency requires immediate action, NMFS finds that compliance with the Regulatory Flexibility Act is impracticable. Thus, the requirements of the Regulatory Flexibility Act are hereby waived.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 29, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.89,

■ a. Amend paragraph (b)(1) introductory text by removing the reference ''paragraph (b)(3)'' and adding ''paragraph (b)(5) in its place'';

■ b. Suspend paragraphs (b)(3), (c)(1)(i), and (c)(2)(i); and

■ c. Add new paragraphs (b)(5), (c)(1)(vi), and (c)(2)(vi) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

(b) * * *

(5) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(1) of this section may not possess cod smaller than 19 inches (48.26 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

* * * * *

(c) * * *

(1) * * *

(vi) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 9 cod per day in, or harvested from, the EEZ.

* * * * *

(2) * * *

(vi) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified in paragraph (c)(2)(v) of this section, each person on a charter/party vessel may possess no more than 9 cod per day.

* * * * *

[FR Doc. 2012–7972 Filed 4–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786–1781–01]

RIN 0648–XB103

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2012 commercial summer flounder quota to the Commonwealth of Virginia. The State of North Carolina is also retroactively transferring a portion of its 2011 commercial summer flounder quota to the Commonwealth of Virginia. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

DATES: Effective April 2, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, 978–281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

North Carolina has agreed to transfer 831,241 lb (377,044 kg) of its 2012 commercial quota to Virginia. This transfer was prompted by summer flounder landings of a number of North Carolina vessels that were granted safe harbor in Virginia due to hazardous shoaling in Oregon Inlet, North Carolina, between February 1, 2012, and March 1, 2012, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. Additionally, 8,601 lb (3,901 kg) of summer flounder commercial quota will be retroactively transferred from North Carolina to Virginia for a landing that occurred on December 19, 2011. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder quotas for calendar year 2011 are: North Carolina, 3,151,783 lb (1,429,625 kg); and Virginia, 5,305,295 lb (2,406,441 kg). The revised summer flounder quotas for calendar year 2012 are: North Carolina, 1,783,420 lb

(808,945 kg); and Virginia, 4,423,924 lb (2,006,658 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 29, 2012.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–7985 Filed 4–2–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 64
Tuesday, April 3, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0139; Airspace Docket No. 12–ANM–3]

Proposed Amendment of Class E Airspace; Livingston, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Livingston, Mission Field Airport, Livingston, MT. Decommissioning of the Livingston Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before May 18, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0139; Airspace Docket No. 12–ANM–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0139 and Airspace Docket No. 12–ANM–3) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0139 and Airspace Docket No. 12–ANM–3''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E surface airspace at Livingston, Mission Field Airport, Livingston, MT. Airspace reconfiguration is necessary due to the decommissioning of the Livingston TACAN. This action would enhance the safety and management of aircraft operations at Livingston, Mission Field Airport, Livingston, MT.

Class E airspace designations are published in paragraph 6002, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed rule, when promulgated, would 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, describes the authority for 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 the 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 would modify controlled airspace at Livingston, Mission Field Airport, Livingston, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 Part 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM MT E2 Livingston, MT [Modified]

Livingston, Mission Field, MT
(Lat. 45°42′09″ N., long. 110°26′50″ W.)

Within a 4.1-mile radius of the Mission Field Airport, and within 2.7 miles each side of the Mission Field Airport 340° bearing extending from the 4.1-mile radius to 7 miles north of the 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.

Issued in Seattle, Washington, on March 26, 2012.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–7941 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0197]

RIN 1625–AA08

Special Local Regulations for Marine Events, Swim Event, Lake Gaston; Littleton, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishment of Special Local Regulations for ''The Crossing'' swim event, to be held on the waters of Lake Gaston, adjacent to the Eaton Ferry Bridge in Littleton, North Carolina. This Special Local Regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on Lake Gaston under the Eaton Ferry Bridge and within 100 yards west of the bridge during the swim event.

DATES: Comments and related material must be received by the Coast Guard on or before May 3, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0197 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0197), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number USCG–2012–0197 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–20120–0197 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

On August 11, 2012 from 7:30 a.m. to 12 p.m., the Organization to Support the Arts, Infrastructure, and Learning on Lake Gaston, also known as O'SAIL, will sponsor ''The Crossing'' on the waters of Lake Gaston, adjacent to Littleton, North Carolina. The swim event will consist of approximately 350 swimmers entering Lake Gaston at the Morning Star Marina on the south bank of Lake Gaston, west of the Eaton Ferry Bridge, and swimming north along the western side of Eaton Ferry Bridge to the Waterview Restaurant. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event.

In an effort to enhance safety of event participants the channel in the vicinity of Eaton Ferry Bridge will remain closed during the event on August 11, 2012 from 7:30 a.m. to 12 p.m. The Coast Guard will temporarily restrict access to this section of Lake Gaston during the event.

Discussion of Proposed Rule

The Coast Guard proposes to establish Special Local Regulations that will restrict vessel movement on the specified waters of Lake Gaston, Littleton, NC. During the Marine Event no vessel will be allowed to transit the waterway unless the vessel operator receives permission from the Patrol Commander.

Special Local Regulations will encompass the waters of Lake Gaston under the Eaton Ferry Bridge, latitude 36°31′06″ North, longitude 077°57′37″ West, and within 100 yards of the western side of Eaton Ferry Bridge. All vessels are prohibited from transiting this section of the waterway while the regulation is in effect. Entry into the regulated area will not be permitted except as specifically authorized by the Captain of the Port or a designated representative. To request permission to transit the area, mariners may contact Coast Guard Sector North Carolina at (910) 343–3882. The regulated area will be enforced from 7:30 a.m. to 12 p.m. on August 11, 2012. This proposed restriction of vessel movement and access to the waterway is for the protection and safety of swimmers participating in the event.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation will restrict access to the area, the effect of this rule will not be significant because the regulated area will be in effect for a limited time, from 7:30 a.m. to 12 p.m., on August 11, 2012. The Coast Guard will provide advance notification via maritime advisories so mariners can adjust their plans accordingly. The regulated area will apply only to the section of Lake Gaston in the immediate vicinity of Eaton Ferry Bridge. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of recreational vessels intending to transit the specified portion of Lake Gaston from 7:30 a.m. to 12 p.m. on August 11, 2012.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect for 4 and one-half hours from 7:30 a.m. to 12 p.m. The regulated area applies only to the section of Lake Gaston in the vicinity of Eaton Ferry Bridge. Vessel traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area once all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO3 Joseph Edge, Waterways Management Division Chief, Coast Guard Sector North Carolina, at (252) 247–4525. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination, under figure 2–1, paragraph 34(h) of the Instruction, that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with movement of vessels near the event area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary § 100.35T05–0197 to read as follows:

§ 100.35T05–0197 Lake Gaston, Enterprise, NC.

(a) *Regulated area.* The following location is a regulated area: All waters of Lake Gaston directly under the Eaton Ferry Bridge, latitude 36°31′06″ North, longitude 077°57′37″ West, and within 100 yards of the western side of the bridge at Littleton, North Carolina. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the ''The Crossing'' swim event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander will control the movement of all vessels in the vicinity of the regulated area. When hailed or signaled by an official patrol vessel, a vessel approaching the regulated area shall immediately comply with the directions given. Failure to do so may result in termination of voyage and citation for failure to comply.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property. The Coast Guard may be assisted in the patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(3) Vessel traffic, not involved with the event, may be allowed to transit the regulated area with the permission of the Patrol Commander. Vessels that desire passage through the regulated area shall contact the Coast Guard Patrol Commander on VHF–FM marine band radio for direction. Only participants and official patrol vessels are allowed to enter the regulated area.

(4) All Coast Guard vessels enforcing the regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22 (157.1 MHz). The Coast Guard will issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period:* This section will be enforced from 7:30 a.m. to 12 p.m. on August 11, 2012.

Dated: March 21, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2012–7962 Filed 4–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 110, and 165

[Docket No. USCG–2012–0174]

RIN 1625–AA00, AA01, AA08, AA11, AA87

OPSAIL 2012 Virginia, Port of Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing temporary regulations in the Port of Hampton Roads, Virginia for Operation Sail (OPSAIL) 2012 Virginia activities. This regulation is necessary to provide for the safety of life on navigable waters before, during, and after OPSAIL 2012 Virginia events. This action is intended to restrict vessel traffic movement in portions of Chesapeake Bay, Hampton Roads, the James River and Elizabeth River.

DATES: Comments and related material must be received by the Coast Guard on or before May 3, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0174 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Dennis Sens, Prevention Division, Fifth Coast Guard District; telephone 757–398–6204, email *Dennis.M.Sens@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0174), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0174) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0174) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket

Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

Operation Sail, Inc. is sponsoring OPSAIL 2012 Virginia in the Port of Hampton Roads. Planned events include the scheduled arrival of U.S. and foreign naval vessels, public vessels, tall ships and other vessels on June 6, 2012 and June 8, 2012; the scheduled departure of those vessels on June 12, 2012; and three fireworks displays on June 9, 2012 with a rain date of June 10, 2012.

The Coast Guard anticipates a large spectator fleet for these events. Vessel operators should expect significant congestion along the OPSAIL parade route and viewing areas for fireworks displays.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public in the Port of Hampton Roads immediately prior to, during, and after the scheduled events. The regulations provide clear passage and a safety buffer around participating vessels along the parade route while they are in transit, enhancing safety of participant and spectator vessels. The regulations also establish areas where vessels shall proceed at the minimum speed necessary that minimizes wake along the parade route and modifies existing anchorage regulations for the benefit of participants and spectators. These proposed regulations will provide a safety buffer around the planned fireworks displays. The regulations will impact the movement of all vessels operating in the specified areas of the Port of Hampton Roads.

The Coast Guard proposes to establish safety and security zones as a part of these regulations to safeguard dignitaries and certain vessels participating in the event. The Coast Guard will implement and enforce safety zones as specified in this regulation. The details of the safety zones outlined in this regulation will also be announced separately via Local Notice to Mariners, Safety Voice Broadcasts, and by other public media outlets.

Vessel operators are also reminded that Norfolk Naval Base will be strictly enforcing the existing restricted area defined at 33 CFR 334.300 during all of the events.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term ''passenger for hire'' is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term ''passenger'' is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $40,000 or face criminal prosecution.

We recommend that vessel operators visiting the Port of Hampton Roads for this event obtain up to date editions of the following charts of the area: NOS. 12222, 12245, 12253, and 12254 to avoid anchoring within a charted cable or pipeline area.

With the arrival of OPSAIL 2012 Virginia participants and spectator vessels in the Port of Hampton Roads for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

Discussion of Proposed Rule

The vessels involved in the Parades of Sail are scheduled to arrive in the Captain of the Port (COTP) Hampton Roads Zone, as described in 33 CFR 3.25–10, on June 6, 2012 and June 8, 2012, following a route that includes specified waters of the Chesapeake Bay, Hampton Roads, James River, and Elizabeth River. The vessels involved in Parades of Sail are scheduled to depart the COTP Hampton Roads Zone on June 12, 2012, following a route that includes specified waters of the Chesapeake Bay, Hampton Roads, James River and Elizabeth River

The safety of marine parade participants and spectators will require that spectator craft be kept at a safe distance from the parade routes during vessel movement. The Coast Guard proposes closing the arrival parade route to all vessels not involved in the Parades of Sail for the duration of events on June 6 and 8, 2012. The arrival parade route has been segmented in this rulemaking to facilitate the earliest possible reopening of the waterway once all OPSAIL 2012 Virginia vessels have cleared a particular segment of the route, but portions of the Elizabeth River will remain closed until all of the OPSAIL 2012 Virginia vessels are safely moored at their assigned berths.

The departure parade route will also require that spectator craft be kept at a safe distance during vessel movement, we propose to establish a temporary moving safety zone around Parade of Sail vessels greater than 100 feet in length overall, while operating in the navigable waters of the Chesapeake Bay or its tributaries, north of latitude 36°55′00″ N and south of the Virginia-Maryland border. This action is necessary to ensure the safety of participants and spectators immediately prior to, during, and following the OPSAIL 2012 activities.

In addition to closing the parade route, we propose to establish Vessel Traffic Control Points to control the flow of spectator vessel traffic immediately prior to and during the parades and fireworks display. Vessel Traffic Control Points will be established on specified areas of the Chesapeake Bay, Hampton Roads, James River and Elizabeth River.

The Coast Guard also intends to temporarily modify the existing anchorage regulations found at 33 CFR Sec. 110.168 to accommodate OPSAIL 2012 Virginia participants and spectator vessels. Spectator vessels will be allowed to anchor in Anchorage E and Anchorage F during the arrival and departure parades of sail. Anchorage K will be closed to all vessels, except large spectator vessels.

The regulations for the Regulated Navigation Area defined in 33 CFR 165.501 will also be temporarily modified for the OPSAIL 2012 Virginia event. Draft limitations for vessels using Thimble Shoal Channel will be waived for OPSAIL 2012 Virginia vessels; and vessels will be required to proceed at the minimum speed necessary that minimizes wake within the regulated navigation area, as defined in 33 CFR 165.501, during the Parades of Sail.

Coast Guard Captain of the Port will give notice of the enforcement of each regulated area and safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event.

Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, the Coast Guard also intends to implement a safety zone from 9 p.m. to 11 p.m. on June 9, 2012 with a rain date from 9 p.m. to 11 p.m. on June 10, 2012.

The regulations contained within this proposed rule are not intended to affect existing Naval Vessel Protection Zone regulations described in Title 33 CFR Part 165 (Subpart G).

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The primary impact of these regulations will be on vessels wishing to transit the affected waterways during OPSAIL 2012 Virginia vessels arrival beginning on June 6, 2012, June 8, 2012, their departure ending on June 12, 2012 and during the fireworks display on June 9, 2012. Although these regulations prevent traffic from transiting a portion of the Chesapeake Bay, Thimble Shoals Channel, Hampton Roads, James River and Elizabeth River during these events, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the magnitude of the event itself will limit or prevent transit of the waterway. These regulations are designed to ensure such transit is conducted in a safe and orderly fashion.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Chesapeake Bay, Thimble Shoals Channel, Hampton Roads, James River and Elizabeth River, in Virginia. The regulations would not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Dennis Sens, Prevention Division, Fifth Coast Guard District; telephone 757–398–6204, email *Dennis.M.Sens@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule would temporarily change who can use various anchorages, establish temporary safety and security zones, and establish temporary special local regulations in conjunction with a marine event of national significance. These activities are categorically excluded from further environmental analysis under figure 2–1, paragraphs (34)(f), (g), and (h) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule. A preliminary environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 100

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

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100, 110, and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary § 100.35T–05–0174 to read as follows:

§ 100.35T–05–0174 Special Local Regulations; OPSAIL 2012 Virginia, Port of Hamptons, VA.

(a) *Definitions.* (1) *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on their behalf.

(2) *Official Patrol Vessel* includes all U.S. Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by the Captain of the Port, Hampton Roads, Virginia.

(3) *Parades of Sail Vessel* include all vessels participating in OPSAIL 2012 Virginia under the auspices of the U.S. Department of Homeland Security Application for Marine Event, Form CG–4423, for OPSAIL 2012 Virginia activities in the Port of Hampton Roads, Virginia approved by the Captain of the Port, Hampton Roads.

(4) *Parade of Sail arrivals* is the movement of Parades of Sail vessels in orderly succession as they navigate designated routes in the Port of Hampton Roads, Virginia while inbound to the Port of Hampton Roads, Virginia on June 6, 2012 and June 8, 2012.

(5) *Parade of Sail departure* is the movement of Parades of Sail vessels in orderly succession as they navigate designated departure routes from the Port of Hampton Roads, Virginia to Baltimore, Maryland on June 12, 2012.

(6) *Spectator Vessel* includes any vessel, commercial or recreational, being used for pleasure or carrying passenger that is in the Port of Hampton Roads to observe part or all of the OPSAIL 2012 Virginia events.

(7) *Large Spectator Vessel* includes any spectator vessel 60 feet or greater in length with a passenger capacity of 50 persons or greater.

(8) *Vessel Traffic Control Point* means a designated point which vessel traffic may not proceed past in either inbound or outbound direction without permission of the Captain of the Port.

(b) *Regulated Areas.* The following Vessel Traffic Control Points are established as special local regulations during OPSAIL 2012 Virginia in the Port of Hampton Roads, Virginia. All coordinates reference Datum NAS 1983:

(1) Elizabeth River, Western Branch along a line drawn across the Elizabeth River, Western Branch, at the West Norfolk Bridge, located at 36°51′31″ N 076°20′54″ W thence to 36°51′16″ N 076°20′38″ W.

(2) Elizabeth River, Eastern Branch along a line drawn across the Elizabeth River, Eastern Branch, at the Berkley Bridge, located at 36°50′33″ N

076°17′11″ W thence to 36°50′27″ N 076°17′12″ W.

(3) Elizabeth River, Southern Branch along a line drawn across the Elizabeth River, Southern Branch, at the Jordan Bridge, located at 36°48′29″ N 076°17′30″ W thence to 36°48′32″ N 076°17′17″ W.

(4) James River along a line drawn across the James River at the Monitor-Merrimac Bridge/Tunnel, located at 36°57′32″ N 076°24′36″ W thence to 36°56′54″ N 076°24′18″ W.

(5) Chesapeake Bay, Hampton Roads, Hampton Bar, along a line drawn from the Old Point Comfort Light (LLNR 9380) to Fort Wool Light (LLNR 9385), located at 37°00′03″ N 076°18′24″ W thence to 36°59′14″ N 076°18′10″ W.

(6) Elizabeth River along a line drawn from Elizabeth River Channel Lighted Buoy 20 (LLNR 9620) to Lafayette River Channel Light 2 (LLNR 10660), located at 36°53′33″ N 076°20′15″ W thence to 36°53′36″ N 076°19′27″ W.

(7) Elizabeth River along a line drawn from Elizabeth River Channel Lighted Buoy 29 (LLNR 9715) to Elizabeth River Channel Lighted Buoy 30 (LLNR 9735), located at 36°52′13″ N 076°19′44″ W thence to 36°52′02″ N 076°19′41″ W.

(8) Elizabeth River along a line drawn from Elizabeth River Channel Lighted Buoy 36 (LLNR 9900), located at 36°50′49.7″ N 076°17′58.7″ W thence to the southeast corner of Hospital Point, approximate position latitude 36°50′51″ N, longitude 076°18′09″ W.

(9) Elizabeth River, Southern Branch along a line drawn across the Elizabeth River, Southern Branch, at the Downtown Tunnel, located at 36°49′57.3″ N 076°17′44.5″ W thence to 36°50′00.3″ N 076°17′35.4″ W.

(c) Notification. (1) Coast Guard Captain of the Port will notify the public of the enforcement of these safety zones by all appropriate means to affect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

(2) *Contact Information.* Questions about safety zones and related events should be addressed to the Coast Guard Captain of the Port. Contact Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(d) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall: (i) Stop the vessel immediately when directed to do so by an Official Patrol.

(ii) Proceed as directed by any official patrol.

(iii) The operator of any vessel shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake in or near the regulated area.

(e) Enforcement Period: This regulation will be enforced on June 6, 8, 9, and 12, 2012.

PART 110—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. In section 110.168, temporarily suspend paragraphs (e)(2), (e)(3), and (e)(6).

3. Add temporary § 110.168T to read as follows:

§ 110.168T Temporary Amendment Anchorages in Hampton Roads, Virginia and adjacent waters (Datum: NAD 83).

(a) The regulations in this temporary section are supplemental to the regulations in 33 CFR 110.168.

(b) Definitions. As used in this section—

(1) *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(2) *Official Patrol Vessel* includes all U.S. Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by the Captain of the Port, Hampton Roads, Virginia.

(3) *Parades of Sail Vessel* includes all vessels participating in OPSAIL 2012 Virginia under the auspices of the U.S. Department of Homeland Security Application for Marine Event, CG–4423, for the OPSAIL 2012 Virginia activities in the Port of Hampton Roads, Virginia approved by the Captain of the Port, Hampton Roads.

(4) *Parade of Sail Arrivals* is the movement of Parades of Sail vessels in orderly succession as they navigate designated routes in the Port of Hampton Roads, Virginia while inbound to the Port of Hampton Roads, Virginia on June 6, 2012 and June 8, 2012.

(5) *Parade of Sail Departure* is the movement of Parades of Sail vessels in orderly succession as they navigate designated departure routes from the Port of Hampton Roads, Virginia to Baltimore, Maryland on June 12, 2012.

(6) *Spectator Vessel* includes any vessel, commercial or recreational, being used for pleasure or carrying passenger that is in the Port of Hampton Roads to observe part or all of the OPSAIL 2012 Virginia events.

(7) *Large Spectator Vessel* includes any spectator vessel 60 feet or greater in length with a passenger capacity of 50 persons or greater.

(8) *Vessel Traffic Control Point* means a designated point which vessel traffic may not proceed past in either inbound or outbound direction without permission of the Captain of the Port.

(c) [RESERVED]

(d) [RESERVED]

(e) The following modifications apply to Anchorage areas E, F and K. These modifications replace the temporarily suspended regulations in 33 CFR 110.168 paragraphs (e)(2), (e)(3), and (e)(6).

(1) [RESERVED]

(2) Anchorage E. Only Spectator Vessels may anchor in Anchorage E.

(3) Anchorage F. Only Spectator Vessels may anchor in Anchorage F.

(4) [RESERVED]

(5) [RESERVED]

(6) Anchorage K. Only Large Spectator Vessels may anchor in Anchorage K.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.501T–05–0174 to read as follows:

§ 165.501T–05–0174 Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—Regulated Navigation Area.

(a) The regulations in this temporary section are supplemental to the regulations in 33 CFR 110.168.

(b) Definitions. In this section:

(1) *Official Patrol Vessel* includes all U.S. Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by the Captain of the Port, Hampton Roads, Virginia.

(2) *Parade of Sail Vessel* includes all vessels participating in OPSAIL 2012 Virginia under the auspices of the U.S. Department of Homeland Security Application for Marine Event, CG–4423, for the OPSAIL 2012 Virginia activities

in the Port of Hampton Roads, Virginia approved by the Captain of the Port, Hampton Roads.

(3) *Parade of Sail Arrivals* is the movement of Parades of Sail vessels in orderly succession as they navigate designated routes in the Port of Hampton Roads, Virginia while inbound to the Port of Hampton Roads, Virginia on June 6, 2012 and June 8, 2012.

(4) *Parade of Sail Departure* is the movement of Parades of Sail vessels in orderly succession as they navigate designated departure routes from the Port of Hampton Roads, Virginia to Baltimore, Maryland on June 12, 2012.

(5) *Spectator Vessel* includes any vessel, commercial or recreational, being used for pleasure or carrying passenger that is in the Port of Hampton Roads to observe part or all of the OPSAIL 2012 Virginia events.

(6) *Large Spectator Vessel* includes any Spectator Vessel 60 feet or greater in length with a passenger capacity of 50 persons or greater.

(7) *Vessel Traffic Control Point* means a designated point which vessel traffic may not proceed past in either inbound or outbound direction without permission of the Captain of the Port.

(c) [RESERVED]

(d) Vessels participating in OPSAIL 2012 Virginia Parades of Sail are exempt from the regulations of 165.501(d)(4).

(e) [RESERVED]

(f) [RESERVED]

(g) *Regulated Navigation Area for OPSAIL 2012 Virginia.* During parades of sail, after firework displays, and any other time deemed necessary for safety and security by the Captain of the Port, Hampton Roads, vessels shall operate at the minimum speed required to maintain steerage and shall avoid creating a wake when operating within the Regulated Navigation Area, as defined in 33 CFR 165.501.

(h) *Regulated areas.* The following locations are a moving safety zone: (1) All waters within 500 yards of any OPSAIL 2012 vessel which is greater than 100 feet in length, while operating in the navigable waters of the Chesapeake Bay or its tributaries, south of the Maryland-Virginia border and north of latitude 36°55′00″ N. Vessels must operate at minimum speed within 500 yards of any OPSAIL 2012 vessel and proceed as directed by the official patrol commander.

(2) All waters within 100 yards of any OPSAIL 2012 vessel which is greater than 100 feet in length overall, while operating in the navigable waters of the Chesapeake Bay or its tributaries, south of the Maryland-Virginia border and north of latitude 36°55′00″ N. Vessels shall not approach within 100 yards any OPSAIL vessel. If a vessel needs to pass within 100 yards of an OPSAIL 2012 vessel in order to ensure safe passage in accordance with the Navigation Rules, the vessel must contact the Coast Guard patrol commander on VHF–FM marine band radio channel 13 (165.65MHz) or channel 16 (156.8 MHz).

3. Add a temporary § 165T05–0174 to read as follows:

§ 165T05–0174 Safety Zone; OPSAIL 2012 Virginia, Port of Hampton, VA.

(a) *Regulated Area.* The following areas are safety zones. All coordinates listed reference Datum NAD 1983.

(1) OPSAIL Parade of Sail Route Segments. Regulated waters enclosed by the following lines: (i) *Segment One.* All waters bounded by a line connecting the Chesapeake Bay Entrance Lighted Whistle Buoy CH (LLNR 405) to Thimble Shoal Channel Lighted Bell Buoy 1TS (LLNR 9205), thence to Thimble Shoal Channel Lighted Bell Buoy 9 (LLNR 9255), thence to Thimble Shoal Channel Lighted Bell Buoy 10 (LLNR 9260), thence to Thimble Shoal Channel Lighted Buoy 2 (LLNR 9210), thence to the beginning.

(ii) *Segment Two.* All waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 9 (LLNR 9255), thence to Thimble Shoal Channel Lighted Gong Buoy 17 (LLNR 9295), thence to Fort Wool Light (LLNR 9385), thence to Old Point Comfort Light (LLNR 9380), thence to Thimble Shoal Channel Lighted Buoy 22 (LLNR 9320), thence to Thimble Shoal Channel Lighted Buoy 18 (LLNR 9300), thence to Thimble Shoal Channel Lighted Buoy 10 (LLNR 9260), thence to the beginning.

(iii) *Segment Three.* All waters bounded by a line connecting Fort Wool Light (LLNR 9385), thence to Elizabeth River Channel Lighted Buoy 1ER (LLNR 9445), thence to Elizabeth River Channel Lighted Bell Buoy 3 (LLNR 9465), thence to Elizabeth River Channel Lighted Gong Buoy 5 (LLNR 9470), thence to Elizabeth River Channel Lighted Buoy 7 (LLNR 9475), thence to Elizabeth River Channel Lighted Buoy 9 (LLNR 9515), thence to Elizabeth River Channel Lighted Buoy 11 (LLNR 9525), thence to Elizabeth River Channel Lighted Buoy 15 (LLNR 9545), thence to Elizabeth River Channel Lighted Gong Buoy 17 (LLNR 9595), thence to Elizabeth River Channel Lighted Buoy 19 (LLNR 9605), thence to Lafayette River Channel Light 2 (LLNR 10660), thence to Elizabeth River Channel Lighted Buoy 20 (LLNR 9620), thence to Elizabeth River Channel Lighted Buoy 18 (LLNR 9600), thence to Elizabeth River Channel Lighted Buoy 14 (LLNR 9540), thence to Elizabeth River Channel Lighted Buoy 12 (LLNR 9530), thence to Elizabeth River Channel Lighted Bell Buoy 10 (LLNR 9520), thence to Elizabeth River Channel Lighted Buoy 8 (LLNR 9500), thence to Newport News Channel Lighted Buoy 2 (LLNR 10840), thence to Old Point Comfort Light (LLNR 9380), thence to the beginning.

(iv) *Segment Four.* All waters bounded by a line connecting Elizabeth River Channel Lighted Buoy 20 (LLNR 9620), thence to Elizabeth River U.S. Navy Deperming Range Sound Signal (LLNR 9725), thence to Elizabeth River Channel Lighted Buoy 30 (LLNR 9735), thence to Elizabeth River Channel Lighted Buoy 32 (LLNR 9840), thence to Elizabeth River Channel Lighted Buoy 36 (LLNR 9900), thence following the shoreline to the western terminus of the Jordan Bridge, thence to the eastern terminus of the Jordan Bridge shoreline, thence following the shoreline to the southern terminus of the Berkley Bridge, thence to the northern terminus of the Berkley Bridge, thence following the shoreline to Elizabeth River Channel Lighted Buoy 33 (LLNR 9850), thence to Elizabeth River Channel Buoy 31 (LLNR 9835), thence to Elizabeth River Channel Lighted Buoy 29 (LLNR 9715), thence to Elizabeth River Channel Lighted Buoy 25 (LLNR 9710), thence to Elizabeth River Channel Lighted Buoy 21 (LLNR 9625), thence to Lafayette River Channel Light 2 (LLNR 10660), thence to the beginning.

(b) *Regulated Area.* The following area is a safety zone. All coordinates listed reference Datum NAD 1983.

(1) *Fireworks Display Safety Zone:* Regulated waters enclosed by the following lines: (i) All waters bounded by a line connecting Elizabeth River Channel Lighted Buoy 20 (LLNR 9620), thence to Elizabeth River U.S. Navy Deperming Range Sound Signal (LLNR 9725), thence to Elizabeth River Channel Lighted Buoy 30 (LLNR 9735), thence to Elizabeth River Channel Lighted Buoy 32 (LLNR 9840), thence to Elizabeth River Channel Lighted Buoy 36 (LLNR 9900), thence following the shoreline to the western terminus of the Jordan Bridge, thence to the eastern terminus of the Jordan Bridge shoreline, thence following the shoreline to the southern terminus of the Berkley Bridge, thence to the northern terminus of the Berkley Bridge, thence following the shoreline to Elizabeth River Channel Lighted Buoy 33 (LLNR 9850), thence to Elizabeth River Channel Buoy 31 (LLNR 9835), thence to Elizabeth River Channel Lighted Buoy 29 (LLNR 9715), thence to Elizabeth River Channel Lighted Buoy 25 (LLNR 9710), thence to

Elizabeth River Channel Lighted Buoy 21 (LLNR 9625), thence to Lafayette River Channel Light 2 (LLNR 10660), thence to the beginning.

(c) Notification. (1) Coast Guard Captain of the Port will notify the public of the enforcement of these safety zones by all appropriate means to affect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

(2) *Contact Information.* Questions about safety zones and related events should be addressed to the Coast Guard Captain of the Port. Contact Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(d) *Regulations:* (1) In accordance with the general regulations in 165.23 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall: (i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65MHz) or channel 16 (156.8 MHz).

(e) Enforcement Period: This regulation will be enforced June 6, 8, 9, and 12, 2012.

Dated: March 15, 2012.

William D. Lee,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2012–7920 Filed 4–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2012–0100]

RIN 1625–AA00; 1625–AA08

Special Local Regulation and Security Zone: War of 1812 Bicentennial Commemoration, Port of Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to adopt a temporary special local regulation and temporary security zones, during, and after the War of 1812 Bicentennial Commemoration events in the Port of Boston, Massachusetts, to be held between June 28, 2012 and July 6, 2012. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected during this event.

DATES: Comments and related material must be received by the Coast Guard on or before May 18, 2012. Requests for public meetings must be received by the Coast Guard on or before April 24, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0100 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston, Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil* or Lieutenant Junior Grade Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone 617–223–8385, email *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0100), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0100 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0100 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility. A copy of this proposal will also be placed in the local notice to mariners.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one on or before April 24, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

The event sponsor hosted a planning and coordination meeting that was open to the public on October 12, 2011 and held an Initial Planning Conference on February 14–15, 2012 in Boston, MA. Recommendations to employ a similar pattern to that which was used during the Sail Boston 2009 events was recommended during this meeting and that recommendation is incorporated into this document. Additionally, informal discussions were held December 21, 2011 and January 18, 2012 during the Boston's Port Operators Group Meeting, and comments concerning the use of traffic patterns the way they were used during Sail Boston 2009 have been addressed. The War of 1812 Bicentennial Commemoration Events will be a topic on the agenda in future monthly Boston Port Operators Group Meetings. On January 26, 2012 the Coast Guard held an informal meeting with Federal, State and local government agencies to brief them on the planning the Coast Guard is doing for the War of 1812 Bicentennial Commemoration Events; this meeting was attended by some local business leaders. Nothing discussed at this meeting impacted the drafting of this proposed regulation.

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1225, 1226, 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L. 107–295, 116 Stat. 2064; Ports and Waterways Safety Act and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define special local regulations and security zones.

The proposed temporary regulations are for the War of 1812 Bicentennial Commemoration events to be held in Boston Harbor, which the U.S. Coast Guard has designated this as a Marine Event of National Significance. These events will be held from June 28, 2012 through July 6, 2012. This rule is proposed to provide for the safety of life on navigable waters and to protect U.S. and Foreign military vessels, U.S. and foreign government sailing vessels, private vessels, spectators, and the Port of Boston during these events.

Discussion of Proposed Rule

The United States Navy is planning a series of events nationwide to celebrate the commemoration of the War of 1812. The Port of Boston events will occur between June 28 and July 6, 2012. The events will consist of a gathering of U.S and foreign military vessels, U.S. and foreign government sailing vessels mooring in various berths throughout the Port of Boston.

At the time of this notice, War of 1812 Bicentennial Commemoration events are expected to include the following:

1. June 28–29—Multiple U.S. and foreign military vessels arrive;
2. June 30: Arrival of the U.S. and foreign government sailing vessels;
3. June 28 through July 6: Security Zones in effect;
4. June 30 through July 6: Public tours of U.S and Foreign military vessels and U.S and foreign government sailing vessels;
5. June 29 through July 6: Vessel movement control measures in effect;
6. July 4: USS CONSTITUTION and USCGC EAGLE Parade;
7. July 4: USN Blue Angles aerial demonstration.

On July 4, starting at 11 a.m. there will be salute to the USS CONSITUTION and USCGC EAGLE as they sail from Constitution Pier, outbound Boston Main Channel to Castle Island and return. This will be followed by an air demonstration by the Navy's Blue Angels above Boston Inner Harbor at approximately 12:15 p.m.

Special Local Regulations

In the year 2009, a similar event, Sail Boston 2009, drew several hundred thousand spectators by both land as well as water to Boston Harbor.

Recognizing the significant draw this event may have on recreational boating traffic, the Coast Guard's proposes to establish a special local regulation that would create vessel movement control measures in Boston Harbor through a Regulated Area, which will be in effect during the War of 1812 Bicentennial Commemoration events.

This proposed regulated area is needed for vessel movement control measures and to facilitate law enforcement vessel access to support facilities. Additionally, the regulated areas will protect the maritime public and participating vessels from possible hazards to navigation associated with dense vessel traffic.

The proposed Regulated Area establishes a counter-clockwise traffic pattern around Boston Inner Harbor to ensure spectator vessels are following an organized route, facilitating the smooth flow of boating traffic, thereby minimizing disruption on the waterway. A Coast Guard Patrol Commander (PATCOM) will be designated and on scene controlling the flow of traffic through the Regulated Area.

The waterway between the World Trade Center Pier and the Fish Pier, as well as the waterway within the Reserved Channel do not constitute large areas for unhindered navigation. Due to the navigation restrictions in these waterways, when vessels over 125 feet enter the area, on-scene patrol personnel will halt the flow of vessel traffic and allow no other vessel in the channel until the vessel greater than 125 feet is clear of the narrow channel.

Due to concerns of tenants at the World Trade Center, Fish Piers and the Black Falcon Terminal, waterside viewing hours for vessels berthed at these facilities will be limited to times specified in the regulatory text, outside of which only vessels which are tenants within the channels of the World Trade Center, Fish Pier and Reserved Channel will be authorized access within those areas.

Security Zones

Additionally, the Coast Guard is proposing to establish 25-yard security

zones surrounding participating vessels while moored. The proposed regulations would be in effect in Boston Harbor throughout the effective period. These restrictions are expected to minimize the risks associated with the anticipated large number of recreational vessel traffic within the confines of Boston Inner Harbor operating in conjunction with commercial deep draft vessel traffic that pose a significant threat to the safety of life.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation imposes traffic restrictions in portions of Boston Harbor during the events, the effect of this regulation will not be significant for the following reasons: the regulated area and security zones will only be in place during the week long War of 1812 activities, and Extensive advance notice will be made to mariners via appropriate means, which may include broadcast notice to mariners, local notice to mariners, facsimile, marine safety information bulletin, local Port Operators Group meetings, the Internet, USCG Sector Boston Homeport Web page, and local newspapers and media. The advance notice will permit mariners to adjust their plans accordingly. Additionally, the regulated area is tailored to impose the least impact on maritime interests without compromising safety.

Similar restrictions were established for Sailing Boston 1992, 2000, and 2009 events. Based upon the Coast Guard's experiences from those previous similar magnitude events, these proposed regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the necessary level of safety.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit, fish, or anchor in portions of Boston Harbor during various times during the effective period.

The proposed rule would not have a significant economic impact on a substantial number of small entities for the same reasons outlined in the Executive Order 12866 and Executive Order 13563 section above.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action appears to be one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under ADDRESSES. This rule appears to be categorically excluded, under figure 2–1, paragraphs (34)(g) and (h) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 100 and 165 as follows:

PART 100—REGATTAS AND MARINE PARADES

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add temporary Sec. 100.T01–0100 to read as follows:

§ 100.T01–0100 Special Local Regulation; War of 1812 Bicentennial Commemoration, Port of Boston, Massachusetts.

(a) *Location:* This special local regulation establishes a regulated area to include all waters west of a line drawn from the monument at Castle Island in approximate position 42°20′21″ N, 71°00′37″ W, to the Logan Airport Security Zone Buoy ''24'' in approximate position 42°20′45″ N, 71°00′29″ W, and then to land in approximate position 42°20′48″ N, 71°00′27″ W, including the Reserved Channel to the Summer Street retractile bridge in approximate position 42°20′34″ N, 71°02′11″ W, the Charles River to the Gridley Locks at the Charles River Dam in approximate position 42°22′07″ N, 71°03′40″ W, the Mystic River at the Alford Street Bridge in approximate position 42°23′22″ N, 71°04′16″ W, and the Chelsea River to the McArdle Bridge in approximate position 42°23′09″ N, 71°02′21″ W.

(b) *Special Local Regulations.* (1) During the effective period, vessel operators transiting through the regulated area shall proceed in a counterclockwise direction at no wake speeds not to exceed five knots, unless otherwise authorized by the Captain of the Port.

(2) Vessel operators shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) From 9 a.m. on June 29, 2012 through 6 p.m. on July 6, 2012 vessel control measures will be implemented. The traffic pattern will be in a counterclockwise rotation, such that all vessels shall stay generally as far to the starboard side of the channel as is safe and practicable.

(4) To facilitate commercial ferry traffic with minimal disruption, commercial ferries within the regulated area, moving between stops on their normal routes, will be exempt from the mandatory counterclockwise traffic pattern. This exemption does not give ferries navigational precedence or in any way alter their responsibilities under the Rules of the Road or any other pertinent regulations.

(5) Vessel operators transiting the waterway between the Fish Pier and World Trade Center must enter and keep to the starboard side of the channel, proceeding as directed by on-scene Coast Guard patrol personnel. Vessel traffic shall move in a counterclockwise direction around a turning point as marked by an appropriate on-scene patrol vessel.

(6) Vessel operators transiting the regulated area must maintain at least twenty five (25) yard safe distance from all official War of 1812 event participants, all U.S. military vessels under 100 feet, and all foreign military vessels, and must make way for all deep draft vessel traffic underway in the regulated area.

(7) When a vessel greater than 125 feet enters the waterway between the World Trade Center and the Fish Pier and inside the Reserved Channel, no other vessel will be allowed to enter until that vessel departs that area unless authorized by the on-scene Patrol Commander.

(8) From 10 p.m. through 8 a.m. daily, while regulated area is in effect, only vessels which are tenants within the channels of the World Trade Center, Fish Pier and Reserved Channel will be authorized access.

(9) The Captain of the Port (COTP) may control the movement of all vessels operating on the navigable waters of Boston Harbor when the COTP has determined that such orders are justified in the interest of safety by reason of weather, visibility, sea conditions, temporary port congestion, and other temporary hazards circumstance.

(c) *Enforcement period.* This regulation will be enforced from 9 a.m. on June 29, 2012 through 6 p.m. on July 6, 2012.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

4. Add temporary Sec. 165.T01–0100 to read as follows:

§ 165.T01–0100 Security Zones: War of 1812 Bicentennial Commemoration, Port of Boston, Massachusetts.

(a) *Location.* The following are security zones: a twenty five (25) yard safety and security zone around all moored official War of 1812 event participants, all moored U.S. military vessels under 100 feet, and all foreign military vessels within the Captain of the Port Zone Boston.

(b) *Definitions.* For purposes of this section ''Designated on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port (COTP) Boston to act on the COTP's behalf. The designated on-scene representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

(c) *Enforcement period.* This regulation will be enforced from 9 a.m. on June 28, 2012 until 6 p.m. on July 6, 2012.

(d) *Regulations.* (1) In accordance with the general regulations in 33 CFR 165.33, subpart D, no person or vessel may enter, transit, anchor or otherwise move within the security zones created by this section unless granted permission to do so by the COTP Boston or the designated on-scene representative.

(2) Vessel operators desiring to enter or operate within the security zone shall contact the COTP or the designated on-scene representative via VHF channel 16 to obtain permission.

(3) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: March 15, 2012.

J.N. Healey,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2012–7917 Filed 4–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0198]

RIN 1625–AA00

Safety Zone, Port of Dutch Harbor; Dutch Harbor, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes temporary safety zones in the Port of Dutch Harbor, Alaska, and adjacent U.S. territorial sea from 12:01 a.m. local time on June 15, 2012, through 11:59 p.m. on July 1, 2012. The temporary safety zones will encompass the navigable waters within a 25-yard radius of moored or anchored offshore exploration or support vessels, and the navigable waters within a 100-yard radius of underway offshore exploration or support vessels. The purpose of the safety zones is to protect persons and vessels during an unusually high volume of vessel traffic in the Port of Dutch Harbor, Alaska, and the adjacent territorial sea due to additional vessel traffic associated with exploratory drilling operations in the Chukchi and Beaufort seas during the summer of 2012.

DATES: Comments and related material must be received by the Coast Guard on or before May 3, 2012.

Requests for public meetings must be received by the Coast Guard on or before April 10, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0198 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LTJG Olivia Jones, Sector Anchorage Enforcement Division, Coast Guard; telephone 907–271–6741, email *Olivia.S.Jones@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0198), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0198'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received

during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0198'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column.

You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

The Coast Guard does not plan to conduct a public meeting, but you may submit a request for one by using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Based on the expectation of increased maritime traffic primarily due to the anticipated arrival of approximately fourteen (14) vessels affiliated with planned offshore drilling operations in the Chukchi and Beaufort Seas, temporary safety zones are proposed to ensure the safe transit of vessels within the navigable waters of the Port of Dutch Harbor and adjacent waters extending seaward to the limits of the territorial sea.

The Coast Guard is proposing temporary safety zones due to safety concerns for personnel aboard the support vessels, mariners operating other vessels in the vicinity of Dutch Harbor, and to protect the environment. Private entities have expressed continued interest in interrupting or preventing offshore oil exploration activities in the arctic. Tactics recently employed to interrupt or prevent offshore oil exploration in the arctic include unlawfully boarding and trespassing upon vessels affiliated with drilling operations and interfering with the safe operation and navigation of these vessels. The Coast Guard has been notified that these tactics are likely to continue and has determined that such tactics will increase safety risks to vessels transiting the Port of Dutch Harbor and the adjacent territorial sea. In an effort to mitigate the safety risks and any resulting environmental damage, the Coast Guard is proposing temporary safety zones within the Port of Dutch Harbor and the adjacent territorial sea.

In evaluating this request, the Coast Guard explored relevant safety factors and considered several criteria, including, but not limited to: (1) The amount of commercial activity in and around the Port of Dutch Harbor; (2) safety concerns for personnel aboard the vessels; (3) sensitivity of the environment in the region and potential adverse affects caused by a grounding, allision, or collision; (4) the types and volume of vessels navigating in the vicinity of the Port of Dutch Harbor; and (5) the need to allow for lawful demonstrations without endangering the safe operations of the support vessels. Vessels transiting in the vicinity of the proposed safety zones could consist of large commercial shipping vessels, fishing vessels, tugs and tows, and recreational vessels. Any group or individual intending to conduct lawful demonstrations in the vicinity of offshore exploration support vessels must do so outside of the temporary safety zones.

Results from a thorough and comprehensive examination of the five criteria identified above, in conjunction with International Maritime Organization guidelines and existing regulations, warrant establishment of the proposed temporary safety zones. The proposed regulation would significantly reduce the threat of collisions, allisions, or other incidents which could endanger the safety of all vessels operating on the navigable waters of the Port of Dutch Harbor and the adjacent territorial sea. The Coast Guard proposes temporary safety zones that will prohibit entry into the zones unless specifically authorized by the Captain of the Port, Western Alaska, or his designated on-scene representative.

Discussion of Proposed Rule

The increased maritime traffic through the Port of Dutch Harbor and the adjacent territorial sea can potentially create a scenario where the safety of vessels transiting through this area is placed at heightened risk. The proposed temporary safety zones would surround the designated vessels while at anchor, moored or underway on the navigable waters of the Port of Dutch Harbor and the adjacent territorial sea in order to mitigate the potential safety risks associated with the increased vessel traffic. The proposed temporary safety zones will encompass the waters within 25 yards of the support vessel if the support vessel is moored or at anchor, and 100 yards if the support vessel is in transit.

The purpose of the proposed temporary safety zones is to facilitate safe navigation and protect vessels from hazards caused by increased volume of vessel traffic, including hazards that may be intentionally created, in the Port of Dutch Harbor, Broad Bay or adjacent navigable waters encompassed within the area from Cape Cheerful at 54–12.000 N 166–38.000 W north to the limits of the U.S. territorial sea, and from Princess Head at 53–59.000 N 166–25.900 W north to the limits of the U.S. territorial sea.

Enforcing temporary safety zones for each offshore exploration or support vessel while they are on the navigable waters in the Port of Dutch Harbor or the adjacent territorial sea will help prevent disruption to the continued operations of the vital and diverse commercial fleets of Dutch Harbor.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the 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 not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The proposed rule is not a significant regulatory action due to the minimal impact this will have on standard vessel operations within the port of Dutch Harbor because of the limited area affected and the limited duration of the rule. The proposed safety zones are also designed to allow vessels transiting through the area to safely travel around the proposed safety zones without incurring additional costs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule could affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit through or refuel within the Port of Dutch Harbor or adjacent waters, or transit through the waters in the near vicinity of the Port of Dutch Harbor from June 15, 2012 to July 1, 2012.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: These safety zone restrictions are only effective from June 15, 2012 to July 1, 2012, and are limited only to waters within 25 yards of the support vessel if the support vessel is moored or at anchor, and 100 yards if the support vessel is in transit.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies as a small entity and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Olivia Jones via the information provided in the **ADDRESSES** portion of this notice. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did

not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Specifically, the proposed rule will establish a safety zone, which is categorically excluded under Commandant Instruction M16475.lD, Figure 2–1, paragraph (34)(g). A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0171.1.

2. Add § 165.T17–0198 to read as follows:

§ 165.T17–0198 Safety Zone; Port of Dutch Harbor; Dutch Harbor, Alaska.

(a) *Location.* The following areas are safety zones:

All navigable waters within a 25-yard radius of a moored or anchored offshore exploration or support vessel, or within a 100-yard radius of any underway offshore exploration or support vessel, located within the Port of Dutch Harbor, Broad Bay or adjacent navigable waters encompassed within the area from Cape Cheerful at 54–12.000 N 166–38.000 W north to the limits of the U.S. territorial sea, and from Princess Head at 53–59.000 N 166–25.900 W north to the limits of the U.S. territorial sea.

(b) *Effective date.* The temporary safety zones become effective at 12:01 a.m., June 15, 2012, and terminate on 11:59 p.m., July 1, 2012, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply to all vessels operating within the area described in paragraph (a).

(1) If a non-exploration or support vessel is moored or anchored and an offshore exploration or support vessel transits near them such that it places the moored or anchored vessel within the 100-yard safety zone described in paragraph (a), the moored or anchored vessel must remain stationary until the offshore exploration or support vessel maneuvers to a distance exceeding the 100-yard safety zone.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) or designated on-scene representative, consisting of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed by the COTP's designated on-scene representative.

(3) Entry into the safety zone is prohibited unless authorized by the COTP or his designated on-scene representative. Any persons desiring to enter the safety zone must contact the designated on-scene representative on VHF channel 16 (156.800 MHz) and receive permission prior to entering.

(4) If permission is granted to transit within the safety zone, all persons and vessels must comply with the instructions of the designated on-scene representative.

(5) The COTP will notify the maritime and general public by marine information broadcast during the period of time that the safety zones are in force by providing notice in accordance with 33 CFR 165.7.

(d) Penalties. Persons and vessels violating this rule are subject to the penalties set forth in 33. U.S.C. 1232 and 50 U.S.C. 192.

Dated: March 21, 2012.

J.A. Fosdick,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 2012–7918 Filed 4–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0922]

RIN 1625–AA87

Security Zones; 2012 Republican National Convention, Captain of the Port St. Petersburg Zone, Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish seven temporary security zones on the waters and adjacent land 20 feet shoreward of the mean high water marks of Garrison Channel, Hillsborough River, Seddon Channel, Sparkman Channel, the unnamed channel north of Davis Islands, Ybor Channel, and Ybor Turning Basin in the vicinity of Tampa, Florida during the 2012 Republican National Convention. The 2012 Republican National Convention will be held at the Tampa Bay Times Forum building and other venues from August 27, 2012 through August 31, 2012. The Department of Homeland Security has designated the 2012 Republican National Convention as a National Special Security Event. The security zones are necessary to protect convention delegates, official parties, dignitaries, the public, and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature.

DATES: Comments and related material must be received by the Coast Guard on or before June 4, 2012. Requests for public meetings must be received by the Coast Guard on or before May 3, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0922 using any of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for

Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *D07-SMB-Tampa-WWM@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage members of the public and others who are interested in or affected by this proposal to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0922), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit comments online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0922'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. Comments submitted by mail or hand delivery must be in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0922'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Coast Guard has an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not anticipate convening public meetings regarding this proposal. You may, however, submit a request for a public meeting on or before May 3, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, a meeting will be convened at a time and place announced in a subsequent notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rule is to provide for the safety and security of convention delegates official parties, dignitaries, and the public during the 2012 Republican National Convention.

Discussion of Proposed Rule

From August 27, 2012 through August 30, 2012, the 2012 Republican National Convention will be held in Tampa, Florida. Primary venues for the 2012 Republican National Convention are the Tampa Bay Times Forum building and the Tampa Convention Center, both of which are located adjacent or proximate to Garrison Channel, Hillsborough River, Seddon Channel, Sparkman Channel, the unnamed channel north of Davis Islands, Ybor Channel, and Ybor Turning Basin in Tampa, Florida. Secondary venues and venues hosting convention-related activities will take place in other locations throughout Tampa, Florida on or in close proximity to navigable waters.

The Secretary of the Department of Homeland Security has designated the 2012 Republican National Convention as a National Special Security Event. National Special Security Events are significant events, which, due to their political, economic, social, or religious significance, may render them particularly attractive targets of terrorism or other criminal activity. The Federal government provides support, assistance, and resources to state and local governments to ensure public safety and security during National Special Security Events.

The Coast Guard has conducted threat, vulnerability, and risk analyses relating to the maritime transportation system and 2012 Republican National Convention activities. Threats confronting the 2012 Republican National Convention assume two primary forms: homeland security threats and violent or disruptive public disorder. The 2012 Republican National Convention is expected to draw widespread protests by persons dissatisfied with national and foreign policy and the Republican Party agenda. This politically-oriented event has the potential to attract anarchists and others intent on expressing their opposition through violence and criminal activity. The 2012 Republican National Convention also presents an attractive target for terrorist and extremist organizations.

Considerable law enforcement on land may render maritime approaches an attractive alternative. Tampa has

significant critical infrastructure in its port area, which is proximate to the downtown area and the Convention's main venues. The Port of Tampa is an industrial-based port, with significant storage and shipment of hazardous materials.

The Department of Homeland Security Small Vessel Security Strategy sets forth several threat scenarios that must be mitigated in the maritime security planning for the 2012 Republican Convention. These threats include the potential use of a small vessel to: (1) Deliver a weapon of mass destruction; (2) launch a stand-off attack weapon; or (3) deliver an armed assault force. 2012 Republican National Convention maritime security planning anticipates these threats, while minimizing the public impact of security operations.

The proposed security zones and accompanying security measures have been specifically developed to mitigate the threats and vulnerabilities identified in the analysis set forth above. Security measures have been limited to the minimum necessary to mitigate risks associated with the identified threats. The Coast Guard considered establishing a waterside demonstration area. However, due to the proximity of the main venue area, the geography of the area in question, the associated threats to the convention, and the potential to interfere with law enforcement and security operations, the Coast Guard determined that establishing such an area would not be feasible. The Coast Guard expects ample landside demonstration areas to be available.

The Coast Guard, on behalf of the 2012 Republican National Convention Public Safety Committee, has initiated an outreach program to inform maritime stakeholders within Tampa of potential disruptions to normal maritime activities during the convention. On January 27, 2012, outreach efforts to the local community began with a presentation to the Tampa Bay Harbor Safety and Security Committee. Additional meetings were held with businesses that operate in the vicinity of the main venue. On February 1, 2012 and February 29, 2012, public meetings were held. At each of these meetings, the Coast Guard presented: (1) General information on National Special Security Events; (2) an overview of the 2012 Republican National Convention; (3) a description of the organization of the public safety committee and subcommittees established for the convention; (4) a brief discussion of the proposed security zones, along with likely limitations on vessel movements and enhanced security measures; and (5) the threat, vulnerability and risk analysis of the convention from a maritime perspective.

Responses to information presented by the Coast Guard were generally positive and supportive. The majority of questions were requests for additional details, such as exactly when the security zone would be in effect and what size vessels will be allowed to transit the zone or use the docks in the primary venue area. Several people asked questions seeking to clarify the restrictions, such as whether boat owners would be able to access their vessels, or whether commercial traffic would be allowed to operate in Sparkman Channel. There were two questions concerning the sufficiency of planned security measures on the south and east sides of Harbour Island.

The Coast Guard responded to all inquiries by stating that the details of the security zones were still under development and were subject to change. At each meeting, the Coast Guard reminded attendees to review the notice of proposed rulemaking when it is published in the **Federal Register**, and encouraged attendees to submit comments to the docket if they had concerns or questions.

The proposed rule would establish seven temporary security zones in the Captain of the Port St. Petersburg Zone during the 2012 Republican National Convention in Tampa, Florida. The security zones would be enforced from 12:01 p.m. on August 25, 2012 through 11:59 a.m. on August 31, 2012. The security zones are listed below. All coordinates are North American Datum 1983.

(1) *Garrison Channel.* All waters of Garrison Channel, including adjacent land 20 feet shoreward of the mean high water mark of Garrison Channel. All persons and vessels would be prohibited from entering or transiting the security zone unless authorized by the Captain of the Port St. Petersburg or a designated representative. Vessels with permanent moorings in the security zone would not be permitted to move during the enforcement period. Vessels remaining in the security zone during the enforcement period would be subject to inspection and examination by Coast Guard and other law enforcement officials. Persons desiring to access their vessels within the security zone would be subject to security screenings.

(2) *Hillsborough River.* All waters of Hillsborough River, including adjacent land 20 feet shoreward of the mean high water mark of Hillsborough River, south of an imaginary line between the following points: Point 1 in position 27°56′44″ N, 82°27′37″ W; and Point 2 in position 27°56′44″ N, 82°27′33″ W. All persons and vessels would be prohibited from entering or remaining within the security zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(3) *Seddon Channel.* All waters of Seddon Channel, including adjacent land 20 feet shoreward of the mean high water mark of Seddon Channel, north of an imaginary line between the following points: Point 1 in position 27°55′52″ N, 82°27′13″ W; and Point 2 in position 27°55′54″ N, 82°27′08″ W. All persons and vessels would be prohibited from entering or remaining within the security zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(4) *Sparkman Channel.* All waters of Sparkman Channel, including adjacent land 20 feet shoreward of the mean high water mark of Sparkman Channel, north of an imaginary line between the following points: Point 1 in position 27°55′51″ N, 82°26′54″ W; and Point 2 in position 27°55′50″ N, 82°26′45″ W. Recreational vessels would be prohibited from entering or remaining in Sparkman Channel unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels would be authorized to enter or transit Sparkman Channel, subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including: (a) Advance notice of intent to transit; (b) inspection and examination of all commercial vessels and persons requesting authorization to transit the security zone (including positive identification checks); and (c) embarkation of law enforcement personnel during authorized security zone transits.

(5) *Unnamed Channel North of Davis Islands.* All waters of the unnamed channel north of Davis Islands, including adjacent land 20 feet shoreward of the mean high water mark of the unnamed channel north of Davis Islands, east of an imaginary line between the following points: Point 1 in position 27°56′16″ N, 82°27′40″ W; and Point 2 in position 27°56′18″ N, 82°27′43″ W. All persons and vessels would be prohibited from entering or remaining within the security zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(6) *Ybor Channel.* All waters of Ybor Channel, including adjacent land 20 feet shoreward of the mean high water mark of Ybor Channel. Recreational vessels

would be prohibited from entering or remaining in Ybor Channel unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels would be authorized to enter or transit Ybor Channel, subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including: (a) Advance notice of intent to transit; (b) inspection and examination of all commercial vessels and persons requesting authorization to transit the security zone (including positive identification checks); and (c) embarkation of law enforcement personnel during authorized security zone transits.

(7) *Ybor Turning Basin.* All waters of Ybor Turning Basin, including adjacent land 20 feet shoreward of the mean high water mark of Ybor Turning Basin. Recreational vessels would be prohibited from entering or remaining in Ybor Turning Basin unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels would be authorized to enter or transit Ybor Turning Basin, subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including: (a) Advance notice of intent to transit; (b) inspection and examination of all commercial vessels and persons requesting authorization to transit the security zone (including positive identification checks); and (c) embarkation of law enforcement personnel during authorized security zone transits.

All persons and vessels desiring to enter or remain within the regulated areas may contact the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter or remain within the regulated areas is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. Recreational vessels authorized to enter or remain within the regulated areas may be subject to boarding and inspection of the vessel and persons onboard.

A Port Community Information Bulletin (PCIB) will be distributed by Coast Guard Sector St. Petersburg. The PCIB will be available on the Coast Guard internet web portal at *http://homeport.uscg.mil.* PCIBs are located under the Port Directory tab in the Safety and Security Alert links. The Coast Guard would provide notice of the security zones by Local Notice to Mariners, Broadcast Notice to Mariners, public outreach, and on-scene designated representatives.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the 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 proposed rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this proposed rule under Executive Order 12866.

The economic impact of this proposed rule is not significant for the following reasons: (1) The security zones would be enforced for a total of 144 hours; (2) the security zones would be in a location where commercial vessel traffic is expected to be minimal; (3) commercial vessel traffic would be authorized to transit the security zones to the extent compatible with public safety and security; (4) persons and vessels would be able to operate in the surrounding area adjacent to the security zones during the enforcement period; (5) persons and vessels would be able to enter or remain within the security zones if authorized by the Captain of the Port St. Petersburg or a designated representative; and (6) the Coast Guard would provide advance notification of the security zones to the local community by Local Notice to Mariners, Broadcast Notice to Mariners, and public outreach.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter or remain within those portions of Garrison Channel, Hillsborough River, Seddon Channel, Sparkman Channel, unnamed channel north of Davis Islands, Ybor Channel, and Ybor Turning Basin encompassed within the proposed security zones from 12:01 p.m. on August 25, 2012 through 11:59 a.m. on August 31, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *D07-SMB-Tampa-WWM@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing seven temporary security zones, as described in paragraph 34(g) of the Instruction that will be enforced for a total of 144 hours. We invite any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a temporary § 165.T07–0922 to read as follows:

§ 165.T07–0922 Security Zones; 2012 Republican National Convention, Captain of the Port St. Petersburg Zone, Tampa, FL.

(a) *Regulated Areas.* The following regulated areas are security zones. All coordinates are North American Datum 1983.

(1) *Garrison Channel.* All waters of Garrison Channel, including adjacent land 20 feet shoreward of the mean high water mark of Garrison Channel. All persons and vessels are prohibited from entering or transiting the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative. Vessels with permanent moorings in the regulated area are not permitted to move during the enforcement period. Vessels remaining in the regulated area during the enforcement period are subject to inspection and examination by Coast Guard and other law enforcement officials. Persons desiring to access their vessels within the regulated area are subject to security screenings.

(2) *Hillsborough River.* All waters of Hillsborough River, including adjacent land 20 feet shoreward of the mean high water mark of Hillsborough River, south of an imaginary line between the following points: Point 1 in position 27°56′44″ N, 82°27′37″ W; and Point 2 in position 27°56′44″ N, 82°27′33″ W. All persons and vessels are prohibited from entering or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(3) *Seddon Channel.* All waters of Seddon Channel, including adjacent land 20 feet shoreward of the mean high water mark of Seddon Channel, north of an imaginary line between the following

points: Point 1 in position 27°55′52″ N, 82°27′13″ W; and Point 2 in position 27°55′54″ N, 82°27′08″ W. All persons and vessels are prohibited from entering or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(4) *Sparkman Channel.* All waters of Sparkman Channel, including adjacent land 20 feet shoreward of the mean high water mark of Sparkman Channel, north of an imaginary line between the following points: Point 1 in position 27°55′51″ N, 82°26′54″ W; and Point 2 in position 27°55′50″ N, 82°26′45″ W. Recreational vessels are prohibited from entering or remaining in the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels are authorized to enter or transit the regulated area, subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including: (a) Advance notice of intent to transit; (b) inspection and examination of all commercial vessels and persons requesting authorization to transit the regulated area (including positive identification checks); and (c) embarkation of law enforcement personnel during authorized regulated area transits.

(5) *Unnamed Channel North of Davis Islands.* All waters of the unnamed channel north of Davis Islands, including adjacent land 20 feet shoreward of the mean high water mark of the unnamed channel north of Davis Islands, east of an imaginary line between the following points: Point 1 in position 27°56′16″ N, 82°27′40″ W; and Point 2 in position 27°56′18″ N, 82°27′43″ W. All persons and vessels are prohibited from entering or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(6) *Ybor Channel.* All waters of Ybor Channel, including adjacent land 20 feet shoreward of the mean high water mark of Ybor Channel. Recreational vessels are prohibited from entering or remaining in Ybor Channel unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels are authorized to enter or transit Ybor Channel, subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including: (a) Advance notice of intent to transit; (b) inspection and examination of all commercial vessels and persons requesting authorization to transit the regulated area (including positive identification checks); and (c) embarkation of law enforcement personnel during authorized regulated area transits.

(7) *Ybor Turning Basin.* All waters of Ybor Turning Basin, including adjacent land 20 feet shoreward of the mean high water mark of Ybor Turning Basin. Recreational vessels are prohibited from entering or remaining in Ybor Turning Basin unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels are authorized to enter or transit Ybor Turning Basin, subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including: (a) Advance notice of intent to transit; (b) inspection and examination of all commercial vessels and persons requesting authorization to transit the security zone (including positive identification checks); and (c) embarkation of law enforcement personnel during authorized regulated area transits.

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

(c) *Regulations.* (1) All persons and vessels desiring to enter or remain within the regulated areas may contact the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16, to request authorization.

A Port Community Information Bulletin is available on the Coast Guard internet web portal at *http://homeport.uscg.mil.* Port Community Information Bulletins are located under the Port Directory tab in the Safety and Security Alert links.

(2) If authorization to enter or remain within the regulated areas is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. Recreational vessels authorized to enter the regulated areas may be subject to boarding and inspection of the vessel and persons onboard.

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

(d) *Effective Date.* This rule is effective from 12:01 p.m. on August 25, 2012 through 11:59 a.m. on August 31, 2012.

Dated: March 13, 2012.

S.L. Dickinson,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2012–7921 Filed 4–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 806, 812, 837, 852, and 873

VA Acquisition Regulation: Simplified Acquisition Procedures for Health-Care Resources (Section 610 Review)

AGENCY: Department of Veterans Affairs.

ACTION: Notice of regulatory review.

SUMMARY: On January 24, 2003, Department of Veterans Affairs (VA) amended the VA Acquisition Regulation (VAAR) by establishing simplified procedures for the competitive acquisition of health-care resources, consisting of commercial services or the use of medical equipment or space, pursuant to the Veterans' Health Care Eligibility Reform Act of 1996 (38 U.S.C. 8151–8153). These procedures are codified at 48 CFR chapter 8. In developing these standards, VA performed a Regulatory Flexibility Analysis which indicated the rule could have a significant impact on a substantial number of small businesses.

VA has initiated a review of this rule under section 610 of the Regulatory Flexibility Act to determine if the rule should be continued without change, or should be amended or rescinded, to minimize adverse economic impacts on small entities. Please note that VA is in the process of rewriting the VAAR and will be reviewing the requirements of this rule in detail as part of this revision initiative. In the interim, VA solicits, and will consider, public comments on factors described in the **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be received by VA on or before May 3, 2012.

ADDRESSES: Written comments may be submitted through *www.regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the

comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dennis Foley, (202) 461–4998, Office of the General Counsel, Professional Staff Group V; or Eyvonne Mallett, (202) 461–5101, Procurement Policy and Warrant Management Service (003A2A), Office of Acquisition, Logistics and Construction, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: The analysis published in the January 24, 2003 final rule (68 FR 3465) reviewed fiscal year (FY) 1998 individual service transactions valued in excess of $25,000. In FY 1998, the Veterans Health Administration (VHA) reported approximately 6,000 individual service transactions above $25,000 excluding classification codes C, architect/engineering; E, purchase of structures; Q402, nursing home; Y, construction; and Z, maintenance of real property, all of which VA believes are not covered by this rule. Of those 6,000 transactions, approximately 3,000 were awarded to small businesses and approximately 900 were reported to non-profit businesses. Similar figures were reported in FY 1999. Of the total acquisition dollars associated with these 6,000 annual awards, we estimate that in FY 1998, approximately 42 percent, and in FY 1999, approximately 44 percent, were awarded to small businesses. In reviewing this analysis, VA determined that the impact on small businesses was minimal because the rule does not apply to the majority of VA acquisitions.

The rule only applies to competitive acquisitions of commercial services or the use of medical equipment or space conducted by VHA that specifically reference the authority of 38 U.S.C. 8153. The rule does not apply to acquisitions of supplies or equipment made on behalf of VHA or to acquisitions made on behalf of Veterans Benefits Administration (VBA) or National Cemetery Administration (NCA). Additionally, the rule does not apply to acquisitions of services for which other specific authorities apply, such as acquisitions of nursing home care services, which are acquired under the authority of 38 U.S.C. 1720, or to acquisitions of non-commercial services, such as construction. Therefore, VA developed the rule in a way that mitigated small business impact to the extent possible while still fulfilling the Veterans' Health Care Eligibility Reform Act of 1996 mandates.

VA has initiated a review of this rule under section 610 of the Regulatory Flexibility Act to determine if the rule should be continued without change, or should be amended or rescinded, to minimize adverse economic impacts on small entities. Please note that VA is in the process of rewriting the VAAR and will be reviewing the requirements of this rule in detail as part of this revision initiative. In the interim, VA solicits, and will consider, public comments on the following factors under this rule: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. VA still considers the rule necessary as it establishes simplified acquisition procedures for VA to acquire health-care resources consisting of commercial services or the use of medical equipment or space as authorized by 38 U.S.C. 8151–8153. No comments were received when the rule was initially published for public comment. In addition, VA has not received any complaints since the rule's final publication. The rule is not overly complex; however, it does overlap and change select provisions of Federal Acquisition Regulation (FAR) Part 15 on negotiated acquisitions. This is to provide VA contracting officers with additional tools and procedures, along with some simplification of the negotiated acquisition process, when deemed advantageous to VA. This rule does not in any way change the fundamental concept in acquisitions that all offerors are treated fairly. Consideration may be given to updating the rule to reflect any changes to FAR references or other citations of authority.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on March 26, 2012, for publication.

Dated: March 29, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–7969 Filed 4–2–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 120307157–2163–01]

RIN 0648–BB74

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the Monterey Bay National Marine Sanctuary (MBNMS) for authorization to take marine mammals incidental to authorizing professional fireworks displays within the MBNMS in California waters, over the course of 5 years. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requests information, suggestions, and comments on these proposed regulations.

DATES: Comments and information must be received no later than May 3, 2012.

ADDRESSES: You may submit comments, identified by 0648–BB74, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- Hand delivery or mailing of comments via paper or disc should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding any aspect of the collection of information requirement contained in this proposed rule should be sent to NMFS via one of the means stated here and to the Office of Information and Regulatory Affairs, NEOB–10202, Office of Management

and Budget (OMB), Attn: Desk Office, Washington, DC 20503, *OIRA@omb.eop.gov.*

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of MBNMS's application, and other supplemental documents, may be obtained by writing to the address specified above (see **ADDRESSES**), calling the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined 'negligible impact' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines 'harassment' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].''

Summary of Request

On April 28, 2011, NMFS received a complete application from MBNMS requesting authorization for take of two species of marine mammals incidental to coastal fireworks displays conducted at MBNMS under authorizations issued by MBNMS. NMFS first issued an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the MMPA to MBNMS on July 4, 2005 (70 FR 39235; July 7, 2005), and subsequently issued 5-year regulations governing the annual issuance of Letters of Authorization (LOAs) under section 101(a)(5)(A) of the MMPA (71 FR 40928; July 19, 2006). Upon expiration of those regulations, NMFS issued MBNMS an IHA (76 FR 29196; May 20, 2011), which expires on July 3, 2012. The requested regulations would be valid from July 4, 2012 until July 3, 2017. Marine mammals would be exposed to elevated levels of sound as a result of authorized fireworks displays, as well as increased human activity associated with those displays. Because the specified activities have the potential to take marine mammals present within the action area, MBNMS requests authorization to take, by Level B harassment only, California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina*).

Background

The MBNMS adjoins 276 mi (444 km), or approximately 25 percent, of the central California coastline, and encompasses ocean waters from mean high tide to an average of 25 mi (40 km) offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County. Fireworks displays have been conducted over current MBNMS waters for many years as part of national and community celebrations (e.g., Independence Day, municipal anniversaries), and to foster public use and enjoyment of the marine environment. In central California, marine venues are the preferred setting for fireworks in order to optimize public access and avoid the fire hazard associated with terrestrial display sites. Many fireworks displays occur at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

In 1992, the MBNMS was the first national marine sanctuary (NMS) to be designated along urban shorelines and therefore has addressed many regulatory issues previously not encountered by the NMS program. Authorization of professional fireworks displays has required a steady refinement of policies and procedures related to this activity. Fireworks displays, and the attendant increase in human activity, are known to result in the behavioral disturbance of pinnipeds, typically in the form of temporary abandonment of haul-outs. As a result, pinnipeds hauled out in the vicinity of authorized fireworks displays may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Numbers of California sea lions and harbor seals, the species that may be subject to harassment, have been recorded extensively at four regions where fireworks displays are authorized in MBNMS. Based on these data and MBNMS's estimated maximum number of fireworks displays, MBNMS is requesting authorization to incidentally harass up to 4,465 California sea lions and 270 harbor seals annually over the 5-year time span of the proposed rule, from July 4, 2012 to July 3, 2017.

Description of the Specified Activity

Since 1993, the MBNMS, a component of NOAA's Office of National Marine Sanctuaries, has processed requests for the professional display of fireworks that affect MBNMS. The MBNMS has determined that debris fallout (i.e., spent pyrotechnic materials) from fireworks events may constitute a discharge into the sanctuary and thus violate sanctuary regulations, unless an authorization is issued by the superintendent. Therefore, sponsors of fireworks displays conducted in the MBNMS are required to obtain sanctuary authorization prior to conducting such displays (see 15 CFR 922.132).

Professional pyrotechnic devices used in fireworks displays can be grouped into three general categories: Aerial shells (paper and cardboard spheres or cylinders ranging from 2–12 in (5–30 cm) in diameter and filled with incendiary materials), low-level comet and multi-shot devices similar to over-the-counter fireworks (e.g., roman

candles), and ground-mounted set piece displays that are mostly static in nature.

Aerial shells are launched from tubes (i.e., mortars), using black powder charges, to altitudes of 200 to 1,000 ft (61 to 305 m) where they explode and ignite internal burst charges and incendiary chemicals. Most of the incendiary elements and shell casings burn up in the atmosphere; however, portions of the casings and some internal structural components and chemical residue may fall back to the ground or water, depending on prevailing winds. An aerial shell casing is constructed of paper/cardboard or plastic and may include some plastic or paper internal components used to compartmentalize chemicals within the shell. Within the shell casing is a burst charge (usually black powder) and a recipe of various chemical pellets (i.e., stars) that emit colored light when ignited. Chemicals commonly used in the manufacturing of pyrotechnic devices include: Potassium chlorate, potassium perchlorate, potassium nitrate, sodium benzoate, sodium oxalate, ammonium, perchlorate, strontium nitrate, strontium carbonate, sulfur, charcoal, copper oxide, polyvinyl chloride, iron, titanium, shellac, dextrine, phenolic resin, and aluminum. Manufacturers consider the amount and composition of chemicals within a given shell to be proprietary information and only release aggregate descriptions of internal shell components. The arrangement and packing of stars and burst charges within the shell determine the type of effect produced upon detonation.

Attached to the bottom of an aerial shell is a lift charge of black powder. The lift charge and shell are placed at the bottom of a mortar that has been buried in earth/sand or affixed to a wooden rack. After a fuse attached to the lift charge is ignited with an electric charge or heat source, the lift charge explodes and propels the shell through the mortar tube and into the air to a height determined by the amount of powder in the lift charge and the weight of the shell. As the shell travels skyward, a time-delay secondary fuse ignites the burst charge within the shell at peak altitude. The burst charge then detonates, igniting and scattering the stars, which may, in turn, produce small secondary explosions. Shells can be launched one at a time or in a barrage of simultaneous or quick succession launches. They are designed to detonate between 200 and 1,000 ft (61 to 305) above ground level (AGL).

In addition to color shells (also known as designer or starburst shells), a typical fireworks show will usually include a number of aerial 'salute' shells. The primary purpose of salute shells is to signify the beginning and end of the show and produce a loud percussive audible effect. These shells are typically 2–3 in (5–7 cm) in diameter and packed with black powder to produce a punctuated explosive burst at high altitude. From a distance, these shells sound similar to cannon fire when detonated.

Low-level devices consist of stars packed linearly within a tube which, when ignited, exit the tube in succession producing a fountain effect of single or multi-colored light as the stars incinerate during the course of their flight. Typically, the stars burn rather than explode, thus producing a ball or trail of sparkling light to a prescribed altitude where they extinguish. Sometimes they may terminate with a small explosion similar to a firecracker. Other low-level devices emit a projected hail of colored sparks or perform erratic low-level flight while emitting a high-pitched whistle, or emit a pulsing light pattern or crackling or popping sound effects. In general, low-level launch devices and encasements remain on the ground or attached to a fixed structure and can be removed upon completion of the display. Common low-level devices are multi-shot devices, mines, comets, meteors, candles, strobe pots and gerbs. They are designed to produce effects between 0 and 200 ft (61 m) AGL.

Set piece or ground level fireworks are primarily static in nature and remain close to the ground. They are usually attached to a framework that may be crafted in the design of a logo or familiar shape, illuminated by pyrotechnic devices such as flares, sparklers and strobes. These fireworks typically employ bright flares and sparkling effects that may also emit limited sound effects such as cracking, popping, or whistling. Set pieces are usually used in concert with low-level effects or an aerial show and sometimes act as a centerpiece for the display. They may have some moving parts, but typically do not launch devices into the air. Set piece displays are designed to produce effects between 0 and 50 ft (15 m) AGL.

Each display is unique, according to the type and number of shells, the pace and length of the show, the acoustic characteristics of the display site, and the weather and time of day. The vast majority (97 percent) of fireworks displays authorized in the Sanctuary between 1993 and 2005 were aerial displays that usually included simultaneous low-level displays, and this trend has continued. An average large display may last 20 minutes and include approximately 700 aerial shells and 750 low-level effects. An average smaller display may last approximately seven minutes and include 300 aerial shells and 550 low-level effects. Recent displays have shown a declining trend in the total number of shells used in aerial displays, likely due to increasing shell costs and/or fixed entertainment budgets. Low-level displays sometimes compensate for the absence of an aerial show by squeezing a larger number of effects into a shorter timeframe. This results in a dramatic and rapid burst of light and sound effects at low level. A large low-level display may expend 4,900 effects within a 7-minute period, and a small display will use an average of 1,800 effects within the same timeframe. Some fireworks displays are synchronized with musical broadcasts over loudspeakers and may incorporate other non-pyrotechnic sound and visual effects.

The MBNMS issued 87 authorizations for professional fireworks displays from 1993–2010. However, the MBNMS staff projects that as many as twenty coastal displays per year may be conducted in, or adjacent to, MBNMS boundaries in the future. Thus, the number of displays would be limited to not more than twenty events per year in four specific areas along 276 mi (444 km) of coastline. Fireworks displays would not exceed 30 minutes (with the exception of up to two displays per year, each not to exceed 1 hour) in duration and would occur with an average frequency of less than or equal to once every 2 months within each of the four prescribed display areas. NMFS believes—and extensive monitoring data indicates—that incidental take resulting from fireworks displays would be, at most, the short-term flushing and evacuation of non-breeding haul-out sites by California sea lions and harbor seals.

A more detailed description of the fireworks displays authorized by MBNMS may be found in MBNMS' application, in MBNMS' Assessment of Pyrotechnic Displays and Impacts within the MBNMS 1993–2001 (2001), or in the report of Marine Mammal Acoustic and Behavioral Monitoring for the MBNMS Fireworks Display, 4 July 2007 (2007), which are available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Description of Fireworks Display Areas

The Monterey Bay area is located in the Oregonian province subdivision of the Eastern Pacific Boreal Region. The six types of habitats found in the bay area are: (1) Submarine canyon habitat, (2) nearshore sublittoral habitat, (3) rocky intertidal habitat, (4) sandy beach

intertidal habitat, (5) kelp forest habitat, and (6) estuarine/slough habitat. Monterey Bay supports a wide array of temperate cold-water species with occasional influxes of warm-water species, and this species diversity is directly related to the diversity of habitats.

Pyrotechnic displays within the sanctuary are conducted from a variety of coastal launch sites (e.g., beaches, bluff tops, piers, offshore barges, golf courses). Authorized fireworks displays would be confined to only four general prescribed areas (with seven total sub-sites) within the sanctuary, while displays along the remaining 95 percent of sanctuary coastal waters would be prohibited. These sites were approved for fireworks events based on their proximity to urban areas and pre-existing high human use patterns, seasonal considerations such as the abundance and distribution of marine wildlife, and the acclimation of wildlife to human activities and elevated ambient noise levels in the area.

The four conditional display areas are located, from north to south, at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek) (see Maps A–J in MBNMS' application). The number of displays would be limited to not more than 20 total events per year within these four specific areas combined, along the whole 276 mi (444 km) of coastline.

Half Moon Bay

This site, at Pillar Point Harbor, is typically used annually for a 20-minute, medium-sized Independence Day fireworks display on July 4. The launch site is on a sandy beach inside and adjacent to the east outer breakwater, upon which the aerial shells are launched and aimed to the southwest.

The harbor immediately adjacent to the impact area is home to a major commercial fishing fleet that operates at all times. The harbor also supports a considerable volume of recreational boat traffic. Half Moon Bay Airport is located adjacent to the harbor and approach and departure routes pass directly over the acute impact area. The airport is commonly used by general aviation pilots for training, with an annual average attendance of approximately fifteen flights per day. On weekends, with good weather, the airport may accommodate as many as fifty flights per day. Beachgoers and water sports enthusiasts use the beaches to the south of the launch site. The impact area is also used by recreational fishermen, surfers, swimmers, boaters, and personal watercraft operators. To the north, around Pillar Point, is an area known as 'Mavericks', considered a world-class surfing destination. Surfing contests are held periodically at Mavericks. The impact area is also subjected to daily traffic noise from California Highway 1, which runs along the coast and is the primary travel route through the area.

Concentrations of harbor seals are present to the north around Pillar Point and on the coast to the south of the launch site. It is possible that individual elephant seals (*Mirounga angustirostris*) may enter the area from breeding sites at Año Nuevo Island and the Farallon Islands, but breeding occurs in the winter and firework displays in Half Moon Bay are limited to summer. Gray whales (*Eschrichtius robustus*) typically migrate west of the reefs extending south from Pillar Point.

Santa Cruz/Soquel

Three separate fireworks display sites (Santa Cruz, Capitola, and Aptos, from west to east) are located within the Santa Cruz/Soquel area. The Santa Cruz launch site is typically used annually for City of Santa Cruz anniversary fireworks displays in early October. The launch site is on a sandy beach, adjacent to the Santa Cruz boardwalk and the San Lorenzo River and along the west bank. The aerial shells are aimed to the south.

The harbor immediately adjacent to the Santa Cruz impact area is home to a commercial fishing fleet that operates at all times. The harbor also supports a large volume of recreational boater traffic. The launch site is in the center of the shoreline of a major urban coastal city. The beaches to the west of the launch site are adjacent to a large coastal amusement park complex and are used extensively by beachgoers and water sport enthusiasts from the local area as well as San Jose and San Francisco. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and other recreational users. Immediately southwest of the launch site is a mooring field and the Santa Cruz Municipal Pier which is lined with retail shops, restaurants, and offices. To the west of the pier is a popular local surfing destination known as 'Steamer Lane'. Surfing contests are routinely held at the site. During the period from sunset through the duration of the fireworks display, 40–70 vessels may anchor within the acute impact area to view the fireworks, with vessels moving throughout the waters south of the launch site to take up position. In addition, U.S. Coast Guard (USCG) and harbor patrol vessels motor through the impact area to maintain a safety zone around the launch site.

The Capitola launch site has been used once since 1993 for a 50-year City of Capitola anniversary fireworks display, on May 23, 1999. This display was one of the largest volume fireworks displays conducted in the MBNMS, incorporating 1,700 aerial shells and 1,800 low-level effects and lasting 25 minutes. The launch site was on the Capitola Municipal Pier, adjacent to the City of Capitola. The aerial shells were aimed above the pier.

The Capitola impact area is immediately adjacent to a small urban community. The beaches to the east and west of the launch site are used daily by beachgoers and water sport enthusiasts from the regional area. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and other recreational users. To the east of the pier is a mooring field and popular public beach.

The Aptos site, at Seacliff State Beach, is typically used annually for a large fundraiser, conducted by the Monte Foundation, for Aptos area schools in October. At the seaward end of the Aptos Pier is a historic 400-ft (122-m) cement vessel, which was purposefully grounded in its current position as an extension of the pier, but which has since been restricted to public access. The exposed interior decks of the vessel have created convenient haul-out surfaces for harbor seals. In a 2000 survey, the MBNMS recorded as many as 45 harbor seals hauled out on the vessel in the month of October. The fireworks launch site is on the Aptos Pier and part of the cement vessel. The aerial shells are aimed above and to the south of the pier. The large aerial show typically lasts for approximately 20 minutes.

The Aptos impact area is immediately adjacent to a recreational beach. The beaches to the east and west of the launch site are used daily by beachgoers and water sport enthusiasts from the regional area. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and other recreational users, but typically at moderate to light levels of activity. To the east and west of the pier are public use beach areas and private homes at the top of steep coastal bluffs. During the period from sunset through the duration of the fireworks display, 30–40 vessels anchor within the acute impact area to view the fireworks, typically traveling throughout the waters seaward of the cement vessel to take up position. In addition, USCG and State Park Lifeguard vessels motor through the

impact area to maintain a safety zone around the launch site.

California sea lions routinely use the Santa Cruz Municipal Pier as a haul-out and resting site. Gray whales typically migrate along a southerly course, west of Point Santa Cruz and away from the pier.

Monterey Peninsula

Two separate fireworks display sites (City of Monterey and Pacific Grove) are located within the Monterey Peninsula area. For Independence Day, the City of Monterey typically launches approximately 750 shells and an equal number of low-level effects from a barge anchored approximately 1,000 ft (305 m) east of Municipal Wharf II and 1,000 ft north of Del Monte Beach. The aerial shells are aimed above and to the northeast. The City's display typically lasts approximately 20 minutes and is accompanied by music broadcasted from speakers on Wharf II. A Monterey New Year's festival has at times used the City's launch barge for an annual fireworks display. This medium-size aerial display typically lasts approximately 8 minutes, when it occurs. In addition, several private displays have been authorized from a launch site on Del Monte Beach, including an aerial display and low-level displays, lasting approximately 7 minutes.

The Monterey fireworks impact area lies directly under the approach/departure flight path for Monterey Peninsula Airport and is commonly exposed to noise and exhaust from general aviation, commercial, and military aircraft at approximately 500 ft (152 m) altitude. The airport supports approximately 280 landings/takeoffs per day in addition to touch-and-goes (landing and takeoff training). Commercial and recreational vessels operate at all hours from the adjacent harbor. A thirty-station mooring field lies within the acute impact area between the launch barge and Municipal Wharf II. The moorings are usually completely occupied during the annual fireworks event. Auto traffic and emergency vehicles are audible from Lighthouse and Del Monte Avenues, main transportation arteries along the adjacent shoreline. The impact area is heavily utilized by recreational users and harbor operations. During the period from sunset through the duration of the fireworks display, 20–30 vessels anchor within the acute impact area to view the fireworks, with vessels transiting through the waters south of the launch site to take up position. In addition, USCG and harbor patrol vessels motor through the impact area to maintain a safety zone around the launch site.

The Pacific Grove site is typically used for an annual 'Feast of Lanterns' fireworks display in late July. The Feast of Lanterns is a community event that has been celebrated in the City of Pacific Grove for over 100 years. The fireworks launch site is at the top of a rocky coastal bluff adjacent to an urban recreation trail and public road. The aerial shells are aimed to the northeast. The small aerial display typically lasts approximately 20 minutes and is accompanied by music broadcasted from speakers at Lover's Cove. The fireworks are part of a traditional outdoor play that concludes the festival.

The Pacific Grove launch site is in the center of an urban shoreline, adjacent to a primary public beach in Pacific Grove. The shoreline to the east and west of the launch site is lined with residences and a public road and pedestrian trail. The impact area is used heavily by boaters and other recreational users. The center of the impact area is in a cove with 30–40 ft (9–12 m) coastal bluffs. Immediately north of the launch site is a popular day use beach area. At peak usage, the beach may support up to 500 visitors at any given time. Surfing activity is common immediately north of the site. During the period from sunset through the duration of the fireworks display, 10–20 vessels anchor within the acute impact area to view the fireworks. A USCG vessel motors through the impact area to maintain a safety zone seaward of the launch site.

The largest concentration of marine mammals near the Monterey impact area consists of California sea lions resting at the Monterey breakwater approximately 700 yd (640 m) northwest of the center of the impact area. Harbor seals routinely use offshore rocks and wash rocks for haul-outs and also forage in the area.

Cambria

The site is typically used annually for a 20-minute, small Independence Day fireworks display on July 4. The launch site is on a sandy beach at Shamel County Park, and the aerial shells are aimed to the west. Immediately north of the launch site is the mouth of Santa Rosa Creek and Lagoon. The impact area is immediately adjacent to a county park and recreational beach. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and beachgoers. The shoreline south of the launch site is lined with hotels, abuts a residential neighborhood, and is part of San Simeon State Beach.

Low concentrations of harbor seals are typically present in the impact area. California sea lions are present in the impact area in moderate numbers. It is possible that individual elephant seals may enter the area from breeding sites to the north at Point Piedras Blancas, but breeding occurs in the winter and displays at Cambria are limited to the summer. Gray whales migrate along the coast in this area and may pass through the acute impact area, but displays typically occur outside of peak gray whale migration period.

Description of Marine Mammals in the Area of the Specified Activity

Twenty-six species of marine mammals are known from the Monterey Bay area. Only six of these species, however, are likely to be present in the acute impact area (the area where sound, light, and debris effects may have direct impacts on marine organisms and habitats) during a fireworks display. These species include the California sea lion, harbor seal, southern sea otter (*Enhydra lutris*), bottlenose dolphin (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), and gray whale. The northern elephant seal is rarely seen in the area.

Though the three aforementioned cetaceans are known to frequent nearshore areas within the sanctuary, they have never been reported in the vicinity of a fireworks display, nor have there been any reports to the MBNMS of stranding events or of injured/dead animals discovered after any display. Because sound attenuates rapidly across the air-water interface, these animals would likely not encounter the effects of fireworks except when surfacing for air. NMFS does not anticipate any take of cetaceans and they are not addressed further in this document.

Past sanctuary observations have not detected any disturbance to sea otters as a result of the fireworks displays; however, past observations have not included specific surveys for this species. Sea otters do frequent all general display areas. Sea otters and other species may temporarily depart the area prior to the beginning of the fireworks display due to increased human activities. Some sea otters in Monterey harbor have become well-acclimated to very intense human activity, often continuing to feed undisturbed as boats pass simultaneously on either side and within 20 ft (6 m) of the otters. It is therefore possible that select individual otters may have a higher tolerance level than others to fireworks displays. Otters in residence within the Monterey harbor display a greater tolerance for intensive human activity than their counterparts in more remote locations. However,

otters are not under NMFS' jurisdiction. The MBNMS consulted with the U.S. Fish and Wildlife Service (USFWS) pursuant to section 7 of the Endangered Species Act (ESA) regarding effects on southern sea otters. The USFWS issued a biological opinion on June 22, 2005, which concluded that the authorization of fireworks displays, as proposed, is not likely to jeopardize the continued existence of endangered and threatened species within the sanctuary or to destroy or adversely modify any listed critical habitat. The USFWS further found that MBNMS would be unlikely to take any southern sea otters, and therefore issued neither an incidental take statement under the ESA nor an IHA.

The northern elephant seal is seen so infrequently in the areas with fireworks displays that they are not likely to be impacted by fireworks displays. Therefore, the only species likely to be harassed by the fireworks displays are the California sea lion and the harbor seal. Information relevant to the distribution, abundance and behavior of the species that are most likely to be impacted by fireworks displays within the MBNMS is provided below.

California Sea Lion

The population of California sea lions ranges from southern Mexico to southwestern Canada (Carretta *et al.,* 2007). In the United States, pupping typically occurs in late May to June. Most individuals of this species breed during July on the Channel Islands off southern California (100 mi (161 km) south of the MBNMS) and off Baja and mainland Mexico (Odell, 1981), although a few pups have been born on Año Nuevo Island (Keith *et al.,* 1984). Following the breeding season on the Channel Islands, most adult and sub-adult males migrate northward to central and northern California and to the Pacific Northwest, while most females and young animals either remain on or near the breeding grounds throughout the year or move southward or northward, as far as Monterey Bay.

Since nearing extinction in the early 1900s, the California sea lion population has increased and is now robust and growing at a current rate of 5.6 to 6.5 percent per year (based on pup counts) with an estimated minimum population of 141,842 animals. The total population level is estimated at 238,000 animals. The population is not listed as endangered or threatened under the ESA, nor is this a depleted or strategic stock under the MMPA.

In any season, California sea lions are the most abundant pinniped in the area (Bonnell *et al.,* 1983), primarily using the central California area to feed during the non-breeding season. After breeding farther south along the coast and migrating northward, populations peak in the Monterey Bay area in fall and winter and are at their lowest numbers in spring and early summer. A minimum of 12,000 California sea lions are probably present at any given time in the MBNMS region. Año Nuevo Island is the largest single haul-out site in the sanctuary, hosting as many as 9,000 California sea lions at times (Weise, 2000; Lowry, 2001). Stage structure of California sea lions within the sanctuary varies by location, but generally, the majority are adult and subadult males.

Harbor Seal

Harbor seals are distributed throughout the west coast of the United States, inhabiting near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. They generally do not migrate, but have been known to travel extensive distances to find food or suitable breeding areas (Carretta *et al.,* 2006). In California, approximately 400–600 harbor seal haul-out sites are widely distributed along the mainland and on offshore islands (Carretta *et al.,* 2006).

The population of the California stock of harbor seals is healthy and growing at a current rate of 3.5 percent per year with an estimated minimum population of 31,600 animals (Carretta *et al.,* 2006). The total California population is estimated at 34,233 animals. The population is not listed as endangered or threatened under the ESA, nor is this a depleted or a strategic stock under the MMPA.

Harbor seals are residents in the MBNMS throughout the year, occurring mainly near the coast. They haul out at dozens of sites along the coast from Point Sur to Año Nuevo. Within MBNMS, tagged harbor seals have been documented to move substantial distances (10–20 km (3.9–7.8 mi)) to foraging areas each night (Oxman, 1995; Trumble, 1995). The species does breed in the sanctuary; pupping within the sanctuary occurs primarily during March and April followed by a molt during May and June. Peak abundance on land within the sanctuary is reached in late spring and early summer when harbor seals haul out to breed, give birth to pups, and molt (MBNMS, 1992). Nicholson (2000) studied harbor seals on the northeast Monterey Peninsula (an area with the largest single concentration of animals within the sanctuary) for 2 years. Using mark-recapture methods based on re-sightings of recognizable individuals, Nicholson (2000) estimated an approximate stage structure in the study area of 38 percent adult females, 15 percent adult males, 34 percent subadults, and 13 percent yearlings or juveniles.

Potential Effects of the Specified Activity on Marine Mammals

Physiological Effects

Temporary (auditory) threshold shift (TTS) is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson *et al.* (1995) noted that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends.

Permanent (auditory) threshold shift (PTS) occurs when there is physical damage to the sound receptors in the ear. In some cases there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges. Although there is no specific evidence that exposure to fireworks can cause PTS in any marine mammals, physical damage to a mammal's ears can potentially occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to fireworks. Some factors that contribute to onset of PTS are as follows: (1) Exposure to a single very intense noise, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Based on current information, NMFS takes a precautionary approach in using an exposure threshold of 190 dB re 1 μPa (rms) for onset of Level A harassment (injury) for pinnipeds under water (NMFS 2000). This level would approximately equal an A-weighted airborne sound intensity level of 128 dB

re 20 μPa. Precise exposure thresholds for airborne sounds have not been determined; however, monitoring of marine mammal reactions to rocket launches at Vandenberg Air Force Base (VAFB) has indicated that behavioral harassment may occur for harbor seals at received levels of 90 dB re 20 μPa, while similar reactions may occur at levels of 100 dB re 20 μPa for other pinniped species. In those studies, not all harbor seals left a haul-out during a launch unless the Sound Exposure Level (SEL) was 100 dB or above (which, in the case of the VAFB launch locations and durations, is equivalent to an SPL of 89 to 95 dB), and only short-term effects were detected.

In order to determine if harbor seals experience any change in their hearing sensitivity as a result of launch noise, researchers at VAFB conducted Auditory Brainstem Response (ABR) testing on ten harbor seals prior to and after the launches of three Titan IV rockets (one of the loudest launch vehicles used at VAFB). Detailed analysis of the changes in waveform latency and waveform replication of the ABR measurements showed that there were no detectable changes in the seals' hearing sensitivity as a result of the launch noise, an A-weighted SPL of approximately 111 dB and an A-weighted SEL from 96.6 to 103.6 dB (SRS Technologies, 2001).

In 2001, the MBNMS and USFWS conducted in-depth monitoring of the July 4 City of Monterey fireworks display. Monitors recorded species abundance before, during, and after the event and measured the decibel level of exploding fireworks. A hand-held decibel meter was located aboard a vessel adjacent to the Monterey Breakwater, approximately one-half mile from the fireworks launch site. The highest sound pressure level (SPL) reading observed on the decibel meter during the fireworks display was 82 dB. The typical decibel levels for the display ranged from 70 to 78 dB, and no salute effects were used in the display. An ambient noise level of 58 dB was recorded at the survey site 30 minutes following the conclusion of the fireworks. MBNMS conducted additional in-depth acoustic and behavioral monitoring at the breakwater, where sea lions typically haul out, during the 2007 City of Monterey July 4 celebration. This effort is described later in this document (see Summary of Previous Monitoring).

Given the frequency, duration, and intensity of sounds (maximum measured 82 dB for larger aerial shells) that marine mammals may be exposed to, it is unlikely that they would sustain temporary, much less permanent, hearing impairment during fireworks displays.

Behavioral Disturbance

In some display locations, marine mammals may avoid or temporarily depart the impact area during the hours immediately prior to the beginning of the fireworks display due to increased human recreational activities associated with the overall celebration event (e.g., noise, boating, kayaking, fishing, diving, swimming, surfing, picnicking, beach combing, tidepooling), and as a fireworks presentation progresses, most marine mammals generally evacuate the impact area. In particular, a flotilla of recreational and commercial boats usually gathers in a semi-circle within the impact area to view the fireworks display from the water. From sunset until the start of the display, security vessels of the USCG and/or other government agencies often patrol throughout the waters of the impact area to keep vessels a safe distance from the launch site.

Sea lions have been observed evacuating haul-out areas upon initial detonation of fireworks, and then returning to the haul-out sites within 4 to 15 hours following the end of the fireworks display. Harbor seals have been seen to remain in the water after initial fireworks detonation around the haul-out site. Sea lions in general are more tolerant of noise and visual disturbances than harbor seals. Adult sea lions have likely habituated to many sources of disturbance and are therefore much more tolerant of nearby human activities. For both pinniped species, pups and juveniles are more likely to be harassed when exposed to disturbance than older animals.

NMFS and MBNMS found no peer-reviewed literature that specifically investigates the response of California sea lions and harbor seals to commercial fireworks displays. However, as described previously, extensive studies have been conducted at VAFB to determine responses by pinnipeds to the effects of periodic rocket launches, the light and sound effects of which would be roughly similar to the effects of pyrotechnic displays, but of greater intensity. This scientific research program was conducted to determine the long-term cumulative impacts of space vehicle launches on the haul-out behavior, population dynamics and hearing acuity of harbor seals at VAFB. In addition, on some occasions, the effects of sonic booms on pinniped populations in the northern Channel Islands have been studied.

The response of harbor seals to rocket launch noise at VAFB depended on the intensity of the noise (size of the vehicle and its proximity) and the age of the seal (SRS Technologies, 2001). The highest noise levels are typically from launch vehicles with launch pads closest to the haul-out sites. The percentage of seals leaving the haul-out increases with noise levels up to approximately 100 dB A-weighted SEL, after which almost all seals leave, although recent data has shown that an increasing percentage of seals have remained on shore, and those that remain are adults. Given the high degree of site fidelity among harbor seals, it is likely that those seals that remained on the haul-out site during rocket launches had previously been exposed to launches; that is, it is possible that adult seals have become acclimated to the launch noise and react differently than the younger inexperienced seals. Of the twenty seals tagged at VAFB, eight (40 percent) were exposed to at least one launch disturbance but continued to return to the same haul-out site. Three of those seals were exposed to two or more launch disturbances. Most of the seals exposed to launch noise appeared to remain in the water adjacent to the haul-out site and then returned to shore within 2 to 22 minutes after the launch disturbance. Of the two remaining seals that left the haul-out after the launch disturbance, both had been on shore for at least 6 hours and returned to the haul-out site on the following day (SRS Technologies, 2001).

The launches at VAFB do not appear to have had long-term effects on the harbor seal population in this area. The total population of harbor seals at VAFB has been estimated to be 1,040 animals, increasing at an annual rate of 12.6 percent. Since 1997, there have been five to seven space vehicle launches per year and there appears to be only short-term disturbance effects to harbor seals as a result of launch noise (SRS Technologies, 2001). Harbor seals will temporarily leave their haul-out when exposed to launch noise; however, they generally return to the haul-out within one hour.

On San Miguel Island, when California sea lions and elephant seals were exposed to sonic booms from vehicles launched at VAFB, sea lion pups were observed to enter the water, but usually remained playing in the water for a considerable period of time. Some adults approached the water, while elephant seals showed little to no reaction. This short-term disturbance to sea lion pups does not appear to carry the possibility of any long-term effects to the population. The conclusions of

the 5-year VAFB study are almost identical to the MBNMS observations of pinniped response to commercial fireworks displays. Observed impacts have been limited to short-term disturbance only.

Effects of Sound and Light

The primary causes of disturbance are sound effects and light flashes from exploding fireworks. Pyrotechnic devices that operate at higher altitudes (e.g., aerial shells) are more likely to have a larger acute impact area, while ground and low-level devices have more confined effects. Acute impact area is defined as the area where sound, light, and debris effects may have direct impacts on marine organisms and habitats. Direct impacts include, but are not limited to, immediate physical and physiological impacts such as abrupt changes in behavior, flight response, diving, evading, flushing, cessation of feeding, and physical impairment or mortality.

The largest commercial aerial shells used within the Sanctuary are 10–12 in (25–30 cm) in diameter and reach a maximum altitude of 1,000 ft (305 m) AGL. The bursting radius of the largest shells is approximately 850 ft (259 m). The acute impact area can extend from 1–2 mi (1.6–3.2 km) from the center of the detonation point, depending on the size of the shell, height and type of the explosions, wind direction, atmospheric conditions, and local topography.

Aerial shells produce flashes of light that can be brilliant (exceeding 30,000 candela) and can occur in rapid succession. Loud explosive and crackling sound effects stem primarily from salutes and bursting charges at altitude. Humans and wildlife on the ground and on the surface of the water may feel the sound waves and the accompanying rapid shift of ambient atmospheric pressure. Sound propagates further from high altitude shells than low altitude shells, thus ensonifying more surface area on the ground and water, as they are not blocked significantly by buildings and landforms. The sound from the lifting charge detonation is vectored upward through the mortar tube opening and reports as a dull thump to bystanders on the ground, far less conspicuous than the high-level aerial bursts. The intensity of an aerial show can be amplified by increasing the number of shells used, the pace of the barrage, and the length of the display.

Low-level devices reach a maximum altitude of 200 ft (61 m) AGL. The acute impact area can extend to 1 mi (1.6 km) from the center of the ignition point depending on the size and flight patterns of projectiles, maximum altitude of projectiles, the type of special effects, wind direction, atmospheric conditions, and local structures and topography. Low-level devices also produce brilliant flashes and fountains of light and sparks accompanied by small explosions, popping, and crackling sounds. Since they are lower in altitude than aerial shells, sound and light effects impact a smaller area. Low-level devices do not typically employ large black powder charges as do aerial shells, but are often used in large numbers in concert with one another and in rapid succession, producing intense localized effects.

Set pieces are stationary, do not launch any encased effects into the air, and produce effects between 0 and 50 ft (15 m) AGL. Small pellets of a pyrotechnic composition, such as those from sparklers or roman candles, may be expelled a short distance into the air. Loud, but not explosive, noises (e.g., crackling, popping, whistling) may emanate from a set piece, though they are usually used in concert with low-level effects and aerial displays. Depending on the size and height of the structure, the number and type of effects, wind direction, and local topography, the acute impact area can extend up to 0.5 mi (0.8 km) from the center of the ignition point, though fallout is generally confined within a 300 ft (91 m) radius. Residue may include smoke, airborne particulates, fine solids, and slag.

The primary impact noted in past observations is disturbance of marine mammals from the light and sound effects of the exploding aerial shells. The loud sound bursts and pressure waves created by the exploding shells appear to cause more wildlife disturbance than the illumination effects. In particular, the percussive aerial salute shells have been observed to elicit a strong flight response in California sea lions in the vicinity of the impact area (within 0.45 mi (0.72 km) of the launch site).

Increased Boat Traffic

Increased boat traffic is often an indirect effect of fireworks displays as boaters move in to observe the event. The more boats there are in the area, the larger the chance that a boat could potentially collide with a marine mammal or other marine wildlife. The number of boats present at any one event is largely dependent upon weather, sea state, distance of the display from safe harbors, and season. At the MBNMS, some events have virtually no boat traffic, while there may more typically be anywhere from 20 to 70 boats present, ranging in size from 10 to 65 ft (3 to 20 m) in length.

Prior to and during fireworks displays at the MBNMS, boats typically enter the observation area at slow speed (less than 8 kn (15 km/hr)) due to the presence of other vessels and limited visibility (i.e., most fireworks displays occur at night). The USCG and/or other federal agency vessels are on site to enforce safe boating laws and keep vessels out of the debris fallout area during the display. Most boaters anchor prior to the display, while others drift with engines in neutral for convenient repositioning.

MBNMS staff have observed boat traffic during several fireworks displays and generally found that boaters are using good boating and safety practices. They have also never witnessed the harassment, injury, or death of marine mammals or other wildlife as a result of vessels making way at these events. In general, as human activity increases and concentrates in the viewing areas leading up to the display, wildlife avoid or gradually evacuate the area. As noted before, the fireworks venues are marine areas with some of the highest ambient levels of human activity in the MBNMS. Many resident animals are accustomed to stimuli (e.g., emergency sirens, vehicle and crowd noise, marine and beach recreation). Due to the gradual nature of the increase in boat traffic, its infrequent occurrence and short duration, and the slow speed of the boats, NMFS does not believe the increased boat traffic is likely to significantly impact marine mammals.

Anticipated Effects on Habitat

Debris

The fallout area for the aerial debris is determined by local wind conditions. In coastal regions with prevailing winds, the fallout area can often be projected in advance. This information is calculated by pyrotechnicians and fire department personnel in selection of the launch site to abate fire and public safety hazards. Mortar tubes are often angled to direct shells over a prescribed fallout area, away from spectators and property. Generally, the bulk of the debris will fall to the surface within a 0.5-mi (0.8-km) radius of the launch site. In addition, the tops of the mortars and other devices are usually covered with aluminum foil to prevent premature ignition from sparks during the display and to protect them from moisture. The shells and stars easily punch through the aluminum foil when ignited, scattering pieces of aluminum in the vicinity of the launch site. Through various means, the aluminum debris and garbage generated during

preparation of the display may be swept into ocean waters.

Some low-level devices may project small casings into the air (such as small cardboard tubes used to house flaming whistle and firecracker type devices). These casings will generally fall to earth within a 200-yd (183-m) radius of the launch site, because they do not attain altitudes sufficient for significant lateral transport by winds. The acute impact area for set piece devices is typically within 300 ft (91 m), but can extend to a 0.5 mi (0.8 km) radius from the center of the ignition point depending on the size and height of the fixed structure, the number and type of special effects, wind direction, atmospheric conditions, and local structures and topography. Like aerial shells, low-level pyrotechnics and mortars are often covered with aluminum foil to protect them from weather and errant sparks, pieces of which are shredded during the course of the show and initially deposited near the launch site.

The explosion in a firework separates the cardboard and paper casing and compartments, scattering some of the shell's structural pieces clear of the blast while burning others. Some pieces are immediately incinerated, while others burn totally or partially on their way to the ground. Many shell casings part into two halves or into quarters when the burst charge detonates and are projected clear of the explosion. However, during the course of a display, some devices will fail to detonate after launch (duds) and fall back to earth/sea as an intact sphere or cylinder. Aside from post display surveys and recovery, there is no way to account for these misfires. The freefalling projectile could pose a physical risk to any wildlife within the fallout area, but the general avoidance of the area by wildlife during the display and the low odds for such a strike likely present a negligible potential for harm. Whether such duds pose a threat to wildlife once adrift is unknown. After soaking in the sea for a period of time, the likelihood of detonation rapidly declines, and it is unlikely that any animal would attempt to consume such a device. At times, some shells explode in the mortar tube (referred to as a flower pot) or far below their designed detonation altitude. It is highly unlikely that mobile organisms would remain close enough to the launch site during a fireworks display to be within the effective danger zone for such an explosion.

The MBNMS has conducted surveys of solid debris on surface waters, beaches, and subtidal habitat and has discovered no visual evidence of acute or chronic impacts to the environment or wildlife. Aerial displays generally produce a larger volume of solid debris than low-level displays. The MBNMS fireworks authorizations require the entity conducting the display to clean area beaches of fireworks debris for up to 2 days following the display. In some cases, debris has been found in considerable quantity on beaches the morning following the display.

The MBNMS staff has recovered many substantial uncharred casing remnants on ocean waters immediately after marine displays. Other items found in the acute impact area are cardboard cylinders, disks, and shell case fragments; paper strips and wadding; plastic wadding, disks, and tubes; aluminum foil; cotton string; and even whole unexploded shells (duds or misfires). In other cases, virtually no fireworks debris was detected. This variance is likely due to several factors, such as type of display, tide state, sea state, and currents. In either case, due to the requirement for clean up following the displays, NMFS does not believe the small amount of remaining debris is likely to significantly impact the environment, including marine mammals or their habitat.

Chemical Residue

Possible indirect impacts to marine mammals and other marine organisms include those resulting from chemical residue or physical debris emitted into the water. When an aerial shell detonates, its chemical components burn at high temperatures and are efficiently incinerated. Pyrotechnic vendors have stated that the chemical components are incinerated upon successful detonation of the shell. However, by design, the chemical components within a shell are scattered by the burst charge, separating them from the casing and internal shell compartments.

Chemical residue is produced in the form of smoke, airborne particulates, fine solids, and slag (spent chemical waste material that drips from the deployment canister/launcher and cools to a solid form). The fallout area for chemical residue is unknown, but is probably similar to that for solid debris. Similar to aerial shells, the chemical components of low-level devices produce chemical residue that can migrate to ocean waters as a result of fallout. The point of entry would likely be within a small radius (about 300 ft (91 m)) of the launch site.

The MBNMS has found only one scientific study directed specifically at the potential impacts of chemical residue from fireworks upon the environment. That study (DeBusk *et al.,* 1992) indicates that chemical residues (fireworks decomposition products) do result from fireworks displays and can be measured under certain circumstances. The report, prepared for the Walt Disney Corporation, presented the results of a 10-year study of the impacts of fireworks decomposition products upon an aquatic environment. Researchers studied a small lake in Florida subjected to 2,000 fireworks displays over a 10-year period to measure key chemical levels in the lake. The report concluded that detectable amounts of barium, strontium, and antimony had increased in the lake but not to levels considered harmful to aquatic biota. The report further suggested that ''environmental impacts from fireworks decomposition products typically will be negligible in locations that conduct fireworks displays infrequently'' and that ''the infrequence of fireworks displays at most locations, coupled with a wide dispersion of constituents, make detection of fireworks decomposition products difficult.'' A report author hypothesized, via personal communication with MBNMS staff, that had the same study been conducted in California, the elevated metal concentrations in the lake would not have been detectable against natural background concentrations of those same metals, due to naturally higher metal concentrations in the western United States. Based on the findings of this report and the lack of any evidence that fireworks displays within the Sanctuary have degraded water quality, it is likely that chemical residue from fireworks does not pose a significant risk to the marine environment. No negative impacts to water quality have been detected.

Summary of Previous Monitoring

The MBNMS has monitored commercial fireworks displays for potential impacts to marine life and habitats since 1993. In July 1993, the MBNMS performed its initial field observations of professional fireworks at the annual Independence Day fireworks display conducted by the City of Monterey. Subsequent 'documented' field observations were conducted in Monterey by the MBNMS staff in July 1994, July 1995, July 1998, March 1998, October 2000, July 2001, and July 2002. MBNMS staff has observed additional displays at Monterey, Pacific Grove, Capitola, and Santa Cruz, but those observations were primarily for compliance purposes, and written assessments of environmental impacts were not generated. Documented field observations were also made at Aptos

each October from 2000 to 2005, and have been made for all authorized fireworks under NMFS-issued MMPA authorizations, beginning in 2005. Though monitoring techniques and intensity have varied over the years and visual monitoring of wildlife abundance and behavioral responses to nighttime displays is challenging, observed impacts have been consistent. Wildlife activity nearest to disturbance areas returns to normal (pre-display species distribution, abundance, and activity patterns) within 12–15 hours, and no signs of wildlife injury or mortality have ever been discovered as a result of managed fireworks displays.

Sea lions in general are more tolerant to noise and visual disturbances than harbor seals. In addition, pups and juveniles of either species are more likely to be harassed when exposed to disturbance than are older animals. Adult sea lions have likely habituated to many sources of disturbance and are therefore much more tolerant of human activities nearby. Of all the display sites in the sanctuary, California sea lions are only present in significant concentrations at Monterey. The following is an excerpt from a 1998 MBNMS staff report on the reaction of sea lions to a large aerial fireworks display in Monterey: ''In the first seconds of the display, the sea lion colony becomes very quiet, vocalizations cease, and younger sea lions and all marine birds evacuate the breakwater. The departing sea lions swim quickly toward the open sea. Most of the colony remains intact until the older bulls evacuate, usually after a salvo of overhead bursts in short succession. Once the bulls depart, the entire colony follows suit, swimming rapidly in large groups toward the open sea. A select few of the largest bulls may sometimes remain on the breakwater. Sea lions have been observed attempting to haul out onto the breakwater during the fireworks display, but most are frightened away by the continuing aerial bursts.

Sea lions begin returning to the breakwater within 30 minutes following the conclusion of the display but have been observed to remain quiet for some time. The colony usually reestablishes itself on the breakwater within 2–3 hours following the conclusion of the display, during which vocalization activity returns. Typically, the older bulls are the first to renew vocalization behavior (within the first hour), followed by the younger animals. By the next morning, the entire colony seems to be intact and functioning with no visible sign of abnormal behavior.''

In the 2001 Monterey survey (discussed previously in this document), most animals were observed to evacuate haul-out areas upon the initial report from detonated fireworks. Surveys continued for 4.5 hours after the initial disturbance and numbers of returning California sea lions remained at less than 1 percent of pre-fireworks numbers. When surveys resumed the next morning (13 hours after the initial disturbance), sea lion numbers on the breakwater equaled or exceeded pre-fireworks levels. Nearly 2 decades of observing sea lions at the City of Monterey's Fourth of July celebration gives the following general observations: sea lions (1) begin leaving the breakwater as soon as the fireworks begin; (2) clear completely off after an aerial salute or quick succession of loud effects; (3) usually begin returning within a few hours of the end of the display; and (4) are present on the breakwater at pre-firework numbers by the following morning.

Up to 15 harbor seals may typically be present on rocks in the outer Monterey harbor in early July. The seal haul-out area is approximately 2,100 ft (640 m) from the impact zone for the aerial pyrotechnic display. Only two harbor seals were observed on and near the rocks adjacent to Fisherman's Wharf prior to the 2001 display. Neither were observed to haul out after the initial fireworks detonation, but remained in the water around the haul-out. The haul-out site was only surveyed until the conclusion of the fireworks display; therefore, no animal return data is available from the 2001 study. However, the behavior of the seals after the initial disturbance and during the fireworks display is similar to the response behavior of seals during the VAFB rocket launches, where they loitered in the water adjacent to their haul-out site during the launch and returned to shore within 2 to 22 minutes after the launch disturbance.

A private environmental consultant monitored the Aptos fireworks display each October from 2001 through 2005 (per California Coastal Commission permit conditions) and concluded that harbor seal activity returned to normal at the site by the day following the display. Surveys have detected no evidence of injury or mortality in harbor seals as a result of the annual 30-minute fireworks display at the site.

Since harbor seals have a smaller profile than sea lions and are less vocal, their movements and behavior are often more difficult to observe at night. In general, harbor seals are more timid and easily disturbed than California sea lions. Thus, based on past observations of sea lion disturbance thresholds and behavior, it is very likely that harbor seals evacuate exposed haul-outs in the acute impact area during fireworks displays, though they may loiter in adjacent surface waters until the fireworks have concluded.

In 2007, MBNMS conducted acoustic monitoring in conjunction with in-depth behavioral monitoring for the City of Monterey Independence Day fireworks display. MBNMS was required to: (1) Conduct counts of marine mammals present within the fireworks impact area immediately before and one day after the event; (2) conduct behavioral observations of marine mammals present during the display; and (3) conduct NMFS-approved acoustic monitoring of sound levels for the duration of the event. The full report (Marine Mammal Acoustic and Behavioral Monitoring for the Monterey Bay National Marine Sanctuary Fireworks Display 4 July 2007) is available at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Two separate systems for monitoring sound levels—with one customized for recording low frequency sounds associated with impulsive noise, such as explosions—were placed at the east end of the USCG pier, approximately 800 m from the fireworks launch site. Acoustic monitoring began approximately 3 hours prior to the beginning of the fireworks display. During those 3 hours, the average 1-hour sound level (L_{eq} 1 hour) was approximately 59 dB, and included sea lion vocalizations, private fireworks in the local area, and recreational boat traffic.

The fireworks display began with two sets of fireworks detonations and ended with a grand finale of multiple explosions after 20 minutes. The average sound level measured during the hour containing the fireworks display was 72.9 dB, approximately 14 dB greater than ambient levels recorded before the display. The loudest sound recorded during the event was associated with the detonation of a 10-in shell, and was measured at 133.9 dB re: 20 μPa (peak). The detonation of the 10-in shell had an unweighted SEL of 105 dB re: 20 μPa^2-s. The second loudest sound recorded was associated with detonation of an 8-in shell, measured at 127 dB re: 20 μPa (peak) with an unweighted SEL of 90.1 dB re: 20 μPa^2-s. Overall, sound generated during the display was low- to mid-frequency and ranged from 97 to 107 dB re: 20 μPa, while the majority of the fireworks detonations ranged from 112 to 124 dB re: 20 μPa.

A marine mammal observer conducted observations aboard a MBNMS vessel in the vicinity of the southern side of the jetty and the western end of Monterey Harbor. The observer used binoculars during the daytime and night vision goggles after dark and counted species present, including location, age, class, and gender of the species. Visual monitoring was conducted from approximately 5 hours prior to the display until approximately 2 hours after the conclusion of the fireworks display. The weather and harbor state provided optimal conditions for observations.

Pre-event behavioral monitoring showed a total of 258 sea lions located on the north and south sides of the jetty and underneath the USCG pier. Most were yearlings or juveniles, though two subadult males were also observed and appeared to be practicing holding territory in the water. With the exception of the subadult males, the observer was unable to determine gender. The number of sea lions hauled out was relatively constant until approximately 30 minutes prior to the beginning of the display, when several recreational vessels passed nearby and shot off their own, unauthorized fireworks and firecrackers, causing approximately one-third of the sea lions to enter the water. During pre-event monitoring, eight harbor seals were hauled out on exposed rocks just offshore of the western end of the harbor. Because it was high tide (0.8 m), there were few places for harbor seals to haul out. Approximately 30 minutes prior to the display, the observer recorded four harbor seals hauled out and two harbor seals in the water.

By the time the fireworks display commenced, the majority of sea lions had already fled the haul-out areas due to recreational vessels in the area and individuals shooting private fireworks in the area. Six sea lions remaining under the USCG pier entered the water during the display. This last flush is likely correlated with detonation of the 8-in shell described previously. Despite the detonations, the observer noted that the sea lions entered the water at a relatively slow rate, and without apparent injury. There were 18 different instances of sea lion vocalizations recorded throughout the fireworks display, indicating that, although sea lions flushed into the water, at least some individuals remained in the harbor during the fireworks display. The observer reported that all of the remaining harbor seals at the western end of the harbor had flushed at the beginning of the fireworks display after hearing the first set of detonations.

The first sea lion (a subadult male) returned to the jetty approximately 20 minutes after the conclusion of the fireworks, and was reported to be practicing holding a territory at the end of the jetty. Three additional sea lions returned after approximately 1 hour. No harbor seals were observed during post-event monitoring. A census was conducted the morning following the display, and revealed approximately 291 California sea lions and 31 harbor seals at their respective haul-out sites. No injured or dead animals were observed. These data indicate that California sea lions and harbor seals were only temporarily displaced from haul-out sites during the fireworks display. This monitoring event indicates that a majority of individuals will flush prior to the beginning of a fireworks display, due to the presence and associated noise of recreational boaters and private, unauthorized fireworks, and that any remaining individuals will likely flee the haul-out at the start of the display. In conclusion, fireworks displays likely result in temporary displacement from haul-outs, constituting a short-term disruption in behavior, and pinnipeds are likely to resume normal behavior and full utilization of haul-outs within approximately 12 hours.

From 2006–2010, under the regulations in effect from July 4, 2006, through July 3, 2011 (71 FR 40928; July 19, 2006), twenty fireworks events were authorized in the MBNMS. For each display, observers conducted a pre-event census to document abundance of marine mammals and post-event surveys to record any injured or dead wildlife species. Pre-event censuses were assumed to be a reasonable proxy for the number of incidental takes, as all animals present within the vicinity of the display area would be expected to temporarily abandon haul-outs prior to or during fireworks displays. Table 1 summarizes these monitoring efforts. In all cases, no pinnipeds other than those authorized for taking were observed, and post-event monitoring revealed no injured or dead marine mammals.

TABLE 1—INCIDENTAL TAKE OF MARINE MAMMALS DURING MBNMS-AUTHORIZED FIREWORKS DISPLAYS, 2006–2010

Event	Location	Date	California sea lions	Harbor seals
Independence Day	Cambria	7/4/2006	0	0
Independence Day	Monterey	7/4/2006	61	9
Feast of Lanterns	Pacific Grove	7/30/2006	0	0
Monte Foundation	Aptos	10/14/2006	0	4
Independence Day	Cambria	7/4/2007	0	0
Independence Day	Monterey	7/4/2007	258	8
Independence Day	Half Moon Bay	7/4/2007	0	1
Feast of Lanterns	Pacific Grove	7/28/2007	0	8
Monte Foundation	Aptos	10/13/2007	0	4
Independence Day	Cambria	7/4/2008	0	0
Independence Day	Monterey	7/4/2008	394	10
Independence Day	Half Moon Bay	7/4/2008	0	2
Feast of Lanterns	Pacific Grove	7/26/2008	0	0
Monte Foundation	Aptos	10/11/2008	24	2
Independence Day	Cambria	7/4/2009	0	0
Independence Day	Half Moon Bay	7/4/2009	45	5
Feast of Lanterns	Pacific Grove	7/25/2009	4	7
Monte Foundation	Aptos	10/3/2009	35	11
Independence Day	Cambria	7/4/2010	0	0
Monte Foundation	Aptos	10/8/2010	0	18
Total			821	89

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the specified activity, and other means of effecting the least practicable impact on each species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of each species or stock for taking for certain subsistence uses (where relevant). The MBNMS and NMFS worked to craft a set of mitigation measures designed to minimize fireworks impacts on the marine environment, as well as to outline the locations, frequency, and conditions under which the MBNMS would authorize marine fireworks displays. These mitigation measures, which were successfully implemented under NMFS-issued ITAs from 2005–2011, include four broad approaches for managing fireworks displays:

- Establish a sanctuary-wide seasonal prohibition to safeguard pinniped reproductive periods. Fireworks events would not be authorized between March 1 and June 30 of any year, i.e., the primary reproductive season for pinnipeds.
- Establish four conditional display areas and prohibit displays along the remaining 95 percent of sanctuary coastal areas. Traditional display areas are located adjacent to urban centers where wildlife has often become habituated to frequent human disturbances. Remote areas and areas where professional fireworks have not traditionally been conducted would not be considered for fireworks approval. The conditional display areas (described previously in this document) are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek).
- Create a per-annum limit on the number of displays allowed in each display area. If properly managed, a limited number of fireworks displays conducted in areas already heavily impacted by human activity can occur with sufficient safeguards to prevent any long-term or chronic impacts upon local natural resources. There is a per-annum limit of twenty displays along the entire sanctuary coastline in order to prevent cumulative negative environmental effects from fireworks proliferation. Additionally, displays would be authorized at a frequency equal to or less than one every 2 months in each area.
- Retain authorization requirements and general and special restrictions for each event. Fireworks displays would not exceed 30 minutes with the exception of two longer displays per year that will not exceed 1 hour. Standard requirements include the use of a ramp-up period, wherein salutes are not allowed in the first 5 minutes of the display; the removal of plastic and aluminum labels and wrappings; and post-show reporting and cleanup. The sanctuary would continue to assess displays and restrict the number of aerial salute effects on a case-by-case basis, and would implement general and special restrictions unique to each fireworks event as necessary.

These measures are designed to prevent an incremental proliferation of fireworks displays and disturbance throughout the sanctuary and minimize area of impact by confining displays to primary traditional use areas. They also effectively remove fireworks impacts from 95 percent of the sanctuary's coastal areas, place an annual quota and multiple conditions on the displays authorized within the remaining 5 percent of the coast, and impose a sanctuary-wide seasonal prohibition on all fireworks displays. These measures were developed in order to assure that protected species and habitats are not jeopardized by fireworks activities. They have been well received by local fireworks sponsors who have pledged their cooperation in protecting sanctuary resources.

NMFS has carefully evaluated the applicant's proposed mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures and their efficacy over the past 6 years of authorizing fireworks, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101 (a)(5)(A) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

In order to continue the long-term understanding of the effects of fireworks displays on pinnipeds, described previously in Summary of Previous Monitoring, as well as to estimate levels of incidental take and ensure compliance with MMPA authorizations, MBNMS will require its applicants to conduct a pre-event census of local marine mammal populations within the acute fireworks impact area. Each applicant will also be required to conduct post-event monitoring in the acute fireworks impact area to record injured or dead marine mammals.

MBNMS must submit a draft annual monitoring report to NMFS within 60 days after the conclusion of the calendar year. MBNMS must submit a final annual monitoring report to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final report. In addition, the MBNMS will continue to make its information available to other marine mammal researchers upon request.

Estimated Take by Incidental Harassment

With respect to the activities described here, the MMPA defines 'harassment' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the

possibility of injurious or lethal takes such that take by Level A harassment, serious injury or mortality is considered remote. However, as noted earlier, there is no specific information demonstrating that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

As discussed previously, the two marine mammal species likely to be taken by Level B harassment incidental to fireworks displays authorized within the sanctuary are the California sea lion and the harbor seal, due to the temporary evacuation of usual and accustomed haul-out sites. Both of these species are protected under the MMPA, while neither is listed under the ESA. Numbers of animals that may be taken by Level B harassment are expected to vary due to factors such as tidal state, seasonality, shifting prey stocks, climatic phenomenon (such as El Niño events), and the number, timing, and location of future displays. The estimated take of sea lions and harbor seals was determined using the monitoring data from 2006–2010, presented earlier in this document, except as described in the footnotes to Table 2. Numbers of animals that may be present were analyzed for the four prescribed areas described previously in this document: Half Moon Bay (HMB), Santa Cruz/Soquel (SC; including Capitola and Aptos), Monterey Bay (MB; including Pacific Grove), and Cambria (C). Please see Table 2 for more information.

TABLE 2—ESTIMATED POTENTIAL INCIDENTAL TAKE PER YEAR BY DISPLAY AREA

Display location	Time of year	Estimated maximum number of events per year	Estimated maximum number of animals present per event (total)	
			California sea lions	Harbor seals
HMB	July	4	45 (180)	5 (20)
SC	October	5	35 (175)	18 (90)
SC [1]	May	1	190	50
MB	July	5	394 (2420)	10 (50)
MB [1]	January	1	1500	60
Cambria [2]	July	4	0	0
Total		20	4,465	270

[1] From 2006–10, no authorized fireworks events occurred at SC during May or at MB during January. However, authorized events have occurred at these locations at these times and could occur again during the life of this proposed rule. Given the lack of monitoring data available, potential take is conservatively estimated for these events on the basis of unpublished data gathered by MBNMS biologists at the specific display sites, unpublished aerial survey data gathered by NMFS from Point Piedras Blancas to Bodega Rock, results of independent surveys conducted in the MBNMS and personal communication with those researchers, and population estimates from surveys covering larger geographic areas.

[2] From 2006–10, no pinnipeds have been observed during monitoring associated with authorized fireworks displays at Cambria.

At all four designated display sites combined, twenty fireworks events per year could likely disturb an estimated maximum total of 4,465 California sea lions out of a total estimated population of 238,000. This number is small relative to the population size (1.9 percent). For harbor seals, an estimated maximum of 270 animals out of a total estimated population of 34,233 could be disturbed within the sanctuary as a result of twenty fireworks events per year at all four designated display sites combined. These numbers are small relative to the population size (0.8 percent).

With the incorporation of mitigation measures proposed previously in this document, only Level B incidental harassment associated with the proposed authorized coastal fireworks displays is likely to occur, and these events are unlikely to result in any detectable impact on marine mammal species or stocks or their habitats.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined 'negligible impact' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

Past monitoring by the MBNMS has identified at most only a short-term behavioral disturbance of animals by fireworks displays, with the primary causes of disturbance being sound effects and light flashes from exploding fireworks. Additionally, the VAFB study of the effects of rocket-launch noise, which is more intense than fireworks noise, on California sea lions and harbor seals indicated only short-term behavioral impacts. With the mitigation measures proposed below, any takes would be limited to the temporary incidental harassment of California sea lions and harbor seals due to evacuation of usual and accustomed haul-out sites for as little as 15 minutes and as much as 15 hours following any fireworks event. Most animals depart affected haul-out areas at the beginning of the display and return to previous levels of abundance within 4 to 15 hours following the event. This information is based on observations made by sanctuary staff over an 8-year period (1993–2001), in-depth surveys conducted in 2001 and 2007, and pre- and post-event monitoring conducted under MMPA authorizations from 2005–2010. Empirical observations have focused on impacts to water quality and selected marine mammals in the vicinity of the displays.

NMFS has preliminarily determined that the fireworks displays, as described in this document and in MBNMS' application, will result in no more than Level B harassment of small numbers of California sea lions and harbor seals. The effects of coastal fireworks displays are typically limited to short term and localized changes in behavior, including temporary departures from haul-outs to avoid the sight and sound of commercial fireworks. Fireworks displays are limited in duration by MBNMS authorization requirements and would not occur on consecutive days at any fireworks site in the sanctuary. The mitigation measures

proposed by MBNMS—and implemented as a component of NMFS' incidental take authorizations since 2005—would further reduce potential impacts. As described previously, these measures ensure that authorized fireworks displays avoid times of importance for breeding, as well as limiting displays to 5 percent of sanctuary coastline that is already heavily used by humans, and generally limiting the overall amount and intensity of activity. No take by injury, serious injury, or mortality is anticipated, and takes by Level B harassment would be at the lowest level practicable due to incorporation of the mitigation measures described previously in this document.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that MBNMS' authorization of coastal fireworks displays will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from coastal fireworks displays will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

As mentioned earlier, the Steller sea lion and several species of ESA-listed cetaceans may be present at MBNMS at different times of the year and could potentially swim through the fireworks impact area during a display. In a 2001 consultation with MBNMS, NMFS concluded that this action is not likely to adversely affect ESA-listed species under NMFS' jurisdiction. There is no designated critical habitat in the area. This action will not have effects beyond those analyzed in that consultation.

The USFWS is responsible for regulating incidental take of the southern sea otter. The MBNMS consulted with the USFWS pursuant to section 7 of the ESA regarding impacts to that species. The USFWS issued a biological opinion on June 22, 2005, which concluded that the authorization of fireworks displays, as proposed, is not likely to jeopardize the continued existence of endangered and threatened species within the sanctuary or to destroy or adversely modify any listed critical habitat. The USFWS further found that MBNMS would be unlikely to take any southern sea otters, and therefore issued neither an incidental take statement under the ESA nor an IHA.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS and MBNMS prepared an Environmental Assessment (EA) on the Issuance of Regulations Authorizing Incidental Take of Marine Mammals and Issuance of National Marine Sanctuary Authorizations for Coastal Commercial Fireworks Displays within the Monterey Bay National Marine Sanctuary, to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of sanctuary authorizations for fireworks displays and issuance of an IHA to MBNMS. NMFS signed a Finding of No Significant Impact (FONSI) on June 21, 2006. NMFS has reviewed MBNMS's application and determined that there are no substantial changes to the proposed action and that there are no new direct, indirect, or cumulative effects to the human environment resulting from issuance of an IHA to MBNMS. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and reaffirms the existing FONSI for this action. The existing EA and FONSI for this action are available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the content of the proposed regulations to authorize the taking described herein (see **ADDRESSES**).

Classification

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The SBA defines small entity as a small business, small organization, or a small governmental jurisdiction. Applying this definition, there are no small entities that are impacted by this proposed rule. This proposed rule impacts only the activities of MBNMS, which has submitted a request for authorization to take marine mammals incidental to authorizing professional fireworks displays within the sanctuary in California waters, over the course of 5 years. MBNMS is a component of the Office of National Marine Sanctuaries within NOAA, which is a federal agency. MBNMS is not considered to be small governmental jurisdiction under the RFA's definition. Under the RFA, governmental jurisdictions are considered to be small if they are ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the **Federal Register**.'' Because this proposed rule impacts only the activities of MBNMS, which is not considered to be a small entity within SBA's definition, the Chief Counsel for Regulation certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. As a result of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is 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 (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS and the OMB Desk Officer (see **ADDRESSES**).

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: March 27, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart B is added to part 217 to read as follows:

Subpart B—Taking of Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

Sec.
217.11 Specified activity and specified geographical region.
217.12 Effective dates.
217.13 Permissible methods of taking.
217.14 Prohibitions.
217.15 Mitigation.
217.16 Requirements for monitoring and reporting.
217.17 Letters of Authorization.
217.18 Renewals and Modifications of Letters of Authorization.

Subpart B—Taking of Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

§ 217.11 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the Monterey Bay National Marine Sanctuary (MBNMS) and those persons it authorizes to display fireworks within the MBNMS for the taking of marine mammals that occurs in the area described in paragraph (b) of this section and that occurs incidental to authorization of commercial fireworks displays.

(b) The taking of marine mammals by MBNMS may be authorized in a Letter of Authorization (LOA) only if it occurs in waters of the MBNMS.

§ 217.12 Effective dates.

Regulations in this subpart are effective from July 4, 2012, through July 3, 2017.

§ 217.13 Permissible methods of taking.

(a) Under LOAs issued pursuant to § 216.106 and § 217.17 of this chapter, the Holder of the LOA (hereinafter ''MBNMS'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.11(b) of this chapter, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 217.11(a) of this chapter is limited to the following species and is limited to Level B Harassment:

(1) Harbor seal (*Phoca vitulina*)—1,350 (an average of 270 annually)

(2) California sea lion (*Zalophus californianus*)—22,325 (an average of 4,465 annually)

§ 217.14 Prohibitions.

Notwithstanding takings contemplated in § 217.11 of this chapter and authorized by a LOA issued under § 216.106 and § 217.17 of this chapter, no person in connection with the activities described in § 217.11 of this chapter may:

(a) Take any marine mammal not specified in § 217.12(b) of this chapter;

(b) Take any marine mammal specified in § 217.13(b) of this chapter other than by incidental, unintentional Level B harassment;

(c) Take a marine mammal specified in § 217.13(b) of this chapter if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 and § 217.17 of this chapter.

§ 217.15 Mitigation.

(a) The activity identified in § 217.11(a) of this chapter must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting the activities identified in § 217.11(a) of this chapter, the mitigation measures contained in the LOA issued under § 216.106 and § 217.17 of this chapter must be implemented. These mitigation measures include but are not limited to:

(1) Limiting the location of the authorized fireworks displays to the four specifically designated areas at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Breakwater, and Cambria (Santa Rosa Creek);

(2) Limiting the frequency of authorized fireworks displays to no more than twenty total displays per year and no more than one fireworks display every 2 months in each of the four prescribed areas;

(3) Limiting the duration of authorized individual fireworks displays to no longer than 30 minutes each, with the exception of two longer shows not to exceed 1 hour;

(4) Prohibiting fireworks displays at MBNMS between March 1 and June 30 of any year; and

(5) Continuing to implement authorization requirements and general and special restrictions for each event, as determined by MBNMS. Standard requirements include, but are not limited to, the use of a ramp-up period, wherein salutes are not allowed in the first 5 minutes of the display; the removal of plastic and aluminum labels and wrappings; and post-show reporting and cleanup. MBNMS shall continue to assess displays and restrict the number of aerial salute effects on a case-by-case basis, and shall implement general and special restrictions unique to each fireworks event as necessary.

(b) The mitigation measures that the individuals conducting the fireworks are responsible for will be included as a requirement in fireworks display authorizations issued by MBNMS to the individual entities.

§ 217.16 Requirements for monitoring and reporting.

(a) MBNMS is responsible for ensuring that all monitoring required under a LOA is conducted appropriately, including, but not limited to:

(1) Counts of pinnipeds in the impact area prior to all displays, and

(2) Reporting to NMFS of all marine mammal injury, serious injury, or mortality encountered during debris cleanup the morning after each fireworks display.

(b) Unless specified otherwise in the LOA, MBNMS must submit a draft annual monitoring report to the Director, Office of Protected Resources, NMFS, no later than 60 days after the conclusion of each calendar year. This report must contain:

(1) An estimate of the number of marine mammals disturbed by the authorized activities,

(2) Results of the monitoring required in § 217.16(a) of this chapter, and any additional information required by the LOA. A final annual monitoring report must be submitted to NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final annual monitoring report.

(c) A draft comprehensive monitoring report on all marine mammal monitoring conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, NMFS at least 120 days prior to expiration of these regulations. A final comprehensive monitoring report must be submitted to the NMFS within

30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final comprehensive monitoring report.

§ 217.17 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, CRC must apply for and obtain a LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, CRC must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, CRC must apply for and obtain a modification of the LOA as described in § 217.18 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.18 Renewals and Modifications of Letters of Authorization.

(a) A LOA issued under § 216.106 and § 217.17 of this chapter for the activity identified in § 217.11(a) of this chapter shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 217.18(c)(1) of this chapter), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 217.18(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register,** including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) A LOA issued under § 217.106 and § 217.17 of this chapter for the activity identified in § 217.11(a) of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with CRC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from CRC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.13(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

[FR Doc. 2012–7844 Filed 4–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120312182–2170–01]

RIN 0648–XA882

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement the annual catch limit (ACL), harvest guideline (HG), and associated annual reference points for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2012, through December 31, 2012. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2012 maximum HG for Pacific sardine is 109,409 metric tons (mt). The proposed initial overall commercial fishing HG that is to be allocated across the three allocation periods for sardine management is 97,409 mt. This amount would be divided across the three seasonal allocation periods for the directed fishery the following way: January 1–June 30—33,093 mt; July 1–September 14—37,964 mt; and September 15–December 31—23,352 mt with an incidental set-aside of 1,000 mt for each of the three periods. This rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Comments must be received by May 3, 2012.

ADDRESSES: You may submit comments on this document identified by NOAA–NMFS–2012–0055 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0055 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Rodney R. McInnis, Regional Administrator, Southwest Region,

NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

• *Fax:* (562) 980–4047.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report ''Assessment of Pacific Sardine Stock for U.S. Management in 2012'' and the Environmental Assessment/Regulatory Impact Review for this action may be obtained from the Southwest Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific sardine is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species (CPS) Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL) and available biological catch (ABC), annual catch limit (ACL) and harvest guideline (HG) recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

The purpose of this proposed rule is to implement the 2012 ACL, HG and other annual catch reference points, including an OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. The HG is based, in large part, on the current estimate of stock biomass. The harvest control rule in the CPS FMP is HG = [(Biomass-Cutoff) * Fraction * Distribution] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above for the 2012 management season is 988,385 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *Distribution.* The portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

At the November 2011 Council meeting, the Council adopted the 2012 Assessment of the Pacific sardine resource and a Pacific sardine biomass estimate of 988,385 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NOAA Fisheries (NMFS) is proposing, an overfishing limit of 154,781 mt, an acceptable biological catch (ABC) of 141,289 mt, an annual catch limit of 141,289 mt (equal to the ABC) and a maximum harvest guideline (HG) (HGs under the CPS FMP are operationally similar to annual catch targets (ACT)) of 109,409 metric tons (mt) for the 2012 Pacific sardine fishing year. These catch specifications are based on the most recent stock assessment and the control rules established in the CPS FMP.

The Council also recommended, and NMFS is proposing, that 97,409 mt be used as the initial overall commercial fishing HG to be allocated across the three allocation periods for sardine management. This number has been reduced from the maximum HG by 12,000 mt: (i) for potential harvest by the Quinault Indian Nation of up to 9,000 mt; and (ii) 3,000 mt, which is initially reserved for potential use under an exempted fishing permit(s) (EFPs). The Council also recommended and NMFS is proposing that incidental catch set asides be put in place for each allocation period. The purpose of the incidental set-aside allotments and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed to reduce bycatch and allow for continued prosecution of other important CPS fisheries. These incidental set asides are allocated as shown in the following table, which also shows the adjusted directed harvest levels for each period in metric tons:

	January 1–June 30	July 1–September 14	September 15–December 31	Total
Total Seasonal Allocation	34,093 (35%)	38,964 (40%)	24,352 (25%)	97,409
Incidental Set Aside	1,000	1,000	1,000	3,000
Adjusted Directed Harvest Allocation	33,093	37,964	23,352	94,409

Although the 2012 HG is well below that of the ACL, additional inseason accountability measures are in place to ensure the fishery stays within the HG. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed. For the remainder of the period, any incidental Pacific sardine landings would be counted against that period's incidental set-aside. The proposed incidental fishery would also be constrained to a 30 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine. In the event that an incidental set-aside is projected to be attained, the incidental fishery will be closed for the remainder of the period. If the set-aside is not fully attained or is exceeded in a given

seasonal period, the directed harvest allocation in the following seasonal period would automatically be adjusted upward or downward accordingly to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period's directed harvest total would be adjusted to account for the discrepancy, as well.

If the total HG or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery would be closed until it re-opens either per the allocation scheme or at the beginning of the next fishing season. The NMFS Southwest Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure.

The Council will hear proposals and comments on any potential EFPs at the March 2012 Council meeting, and at the April 2012 Council meeting it will make a final recommendation to NMFS on whether or not all or a portion of the 3,000 mt EFP set-aside should be allocated for use under any EFP(s). NMFS will likely make a decision on whether to issue an EFP for Pacific sardine sometime prior to the start of the second seasonal period (July 1, 2012). Any of the 3,000 mt that is not issued to an EFP will be rolled into the third allocation period's directed fishery. Any set-aside attributed to an EFP designed to be conducted during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period's directed fishery. Any set-aside attributed to an EFP designed to be conducted during closed fishing times in the third allocation, but not utilized, will not be re-allocated.

In response to a request by the Quinault Indian Nation for the exclusive right to harvest Pacific sardine in 2012 in their Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to their rights to fish under the 1856 Treaty of Olympia (Treaty with the Quinault), the Council recommended and NMFS approved an allocation of 9,000 mt of sardine to the Quinault in 2012. NMFS will consult with Quinault Department of Fisheries staff and Quinault Fisheries Policy representatives on or near September 1, 2012 to review Quinault catch to-date, Oregon and Washington catch to-date and any other relevant information in an attempt to project tribal catch for the remainder of the season. The purpose of this consultation will be to determine whether any part of the 2012 Quinault Pacific sardine set-aside of 9,000 mt will be moved into the non-tribal third period allocation that begins September 15.

Detailed information on the fishery and the stock assessment are found in the report ''Assessment of the Pacific Sardine Resource in 2011 for U.S. Management in 2012'' (see **ADDRESSES**).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of this proposed rule is to implement the 2012 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an OFL, ABC, ACL and HG or ACT for the Pacific sardine fishery based on the harvest control rules in the FMP. The specific harvest control rule is applied to the current stock biomass estimate to derive the annual HG which is used to manage the directed commercial take of Pacific sardine.

The HG is apportioned based on the following allocation scheme: 35 percent of the HG is allocated coastwide on January 1; 40 percent of the HG, plus any portion not harvested from the initial allocation is then reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations will be released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery will close until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during an allocation period or the year; the HG and seasonal allocations are available until fully utilized by the entire CPS fleet.

The U.S. Small Business Administration defines small businesses engaged in fishing as those vessels with annual revenues of or below $4 million. The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finfish fleet. Approximately 108 vessels are permitted to operate in the sardine fishery component of the CPS fishery off the U.S. West Coast; 64 permits in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 44 permits in Oregon and Washington's state Pacific sardine fisheries. The average annual per vessel revenue in 2010 for the West Coast CPS finfish fleet was well below $4 million; therefore, all of these vessels therefore are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact these small entities in the same manner. Accordingly, there would be no economic impacts resulting from disproportionality between small and large business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2011 fishing year the HG was set at 50,526 mt. Approximately 47,000 mt (28,000 in California and 19,000 in Oregon and Washington) of this HG were harvested during the 2011 fishing season, for an estimated ex-vessel value of $10 million. Using these figures, the average 2011 ex-vessel price per mt of Pacific sardines was approximately $200.

The proposed HG for the 2012 Pacific sardine fishing season (January 1, 2012 through December 31) is 109,409 metric tons (mt). This HG is 66 percent higher than the HG for 2011. If the fleet were to take the entire 2012 HG, and assuming a coastwide average ex-vessel price per mt of $190 (average of 2010 and 2011 ex-vessel), the potential revenue to the fleet would be approximately $21 million. Therefore the proposed rule will increase small entities' profitability compared to last season, due to the much higher HG this fishing season. Whether this will occur will depend somewhat on market forces within the fishery, and on the regional availability of the resource to the fleets and the fleets' ability to find pure

schools of Pacific sardine. A change in the market rate and/or the potential lack of availability of the resource to the fleets could cause a reduction in the amount of Pacific sardine that is harvested which, in turn, would reduce the potential total revenue to the fleet from Pacific sardine. However, due to the large increase in the HG compared to last year, even if changes in the market value occur, the fishery is likely to see an increase in total revenue compared last season. Additionally, unused sardine from the potential EFP or from the 9,000-mt set-aside for use by the Quinault Indian Nation, might be used to supplement the amount available to the directed fishery of the third allocation period (September 15 through December 31).

The revenue derived from harvesting Pacific sardine is also only one factor determining the overall revenue for a majority of the vessels in the CPS fleet, and, therefore, the economic impact to the fleet from the proposed action cannot be viewed in isolation. CPS finfish vessels typically harvest a number of other species, including anchovy, mackerel, squid, and tuna, making Pacific sardine only one component of a multi-species CPS fishery. Vessels rely on multiple species for profitability because each CPS stock is highly associated with different ocean conditions and different time periods, and so are harvested at various times throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore as abundance levels and markets fluctuate, the CPS fishery as a whole relies on a group of species for annual revenues. Accordingly, even if sardine prices drop, such a drop will have only a small impact, if at all, on the profits of CPS fishery vessels.

Based on the disproportionality and profitability analysis above, this rule, if adopted, will not have a significant economic impact on a substantial number of these small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 29, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–7986 Filed 4–2–12; 8:45 am]

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Notices

Federal Register

Vol. 77, No. 64

Tuesday, April 3, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title: Risk Management Education in Targeted States (Targeted States Program); Announcement Type: Announcement of Availability of Funds and Request for Applications (RFA) for Competitive Cooperative Agreements

Catalog of Federal Domestic Assistance (CFDA) Number: 10.458.

DATES: All applications, which must be submitted electronically through Grants.gov, must be received by close of business (COB) on May 18, 2012. Hard copy applications will NOT be accepted.

SUMMARY: The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces its intent to award approximately $5,000,000 (subject to availability of funds) to fund cooperative agreements under the Risk Management Education in Targeted States Program.

Purpose: The purpose of the Targeted States program is to deliver crop insurance education and information to U.S. agricultural producers in States where there is traditionally, and continues to be, a low level of Federal crop insurance participation and availability, and producers are underserved by the Federal crop insurance program. These states, defined as Targeted States for the purposes of this RFA, are Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. Any cooperative agreements that may be funded will not exceed the maximum funding amount established for each of the Targeted States. Awardees must agree to the substantial involvement of RMA in the project.

Applications submitted under this RFA must demonstrate how the proposed education and outreach activities will help producers in Targeted States understand:

- The kinds of risks addressed by crop insurance;
- The features of existing and emerging crop insurance products;
- The use of crop insurance in the management of risk;
- How the use of crop insurance can affect other risk management decisions, such as the use of marketing and financial tools;
- How to make informed decisions on crop insurance prior to the sales closing date deadline; and,
- Record-keeping requirements for crop insurance.

Funding availability for this program may be announced at approximately the same time as funding availability for the similar but separate program, the Risk Management Education and Outreach Partnerships Program (CFDA No. 10.460). Prospective applicants must carefully examine and compare the notices of each announcement.

The collections of information in this announcement have been approved by the Office of Management and Budget (OMB) under control number 0563–0067.

This Announcement Consists of Eight Sections

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Full Text of Announcement

I. Funding Opportunity Description

A. Legislative Authority

The Targeted States Program is authorized under section 524(a)(2) of the Federal Crop Insurance Act (FCIA), 7 U.S.C. 1524(a)(2).

B. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved

communities, and providing risk management education and information.

One of RMA's strategic goals is to ensure that its customers are well-informed of risk management solutions available. This educational goal is authorized by section 524(a)(2) of the FCIA (7 U.S.C. 1524(a)(2). This section authorizes funding for the establishment of crop insurance education and information programs in States where there is traditionally, and continues to be, a low level of Federal crop insurance participation and availability, and producers are underserved by the Federal crop insurance program. In accordance with the FCIA, the States with this designation for FY 2012 are Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming (defined as ''Targeted States'' for the purposes of this RFA).

C. Project Goal

The goal of the Targeted States Program is to ensure that producers in the Targeted States are fully informed of existing and emerging crop insurance products in order to take full advantage of such products. In carrying out the requirements under Section 12026 of the Food, Conservation, And Energy Act of 2008, the Secretary of Agriculture has placed special emphasis on risk management strategies, education, and outreach specifically targeted to the following producers:

(A) Beginning farmers or ranchers;

(B) Legal immigrant farmers or ranchers that are attempting to become established producers in the United States;

(C) Socially disadvantaged farmers or ranchers;

(D) Farmers or ranchers that—

(i) are preparing to retire; and

(ii) are using transition strategies to help new farmers or ranchers get started; and

(E) New or established farmers or ranchers that are converting production and marketing systems to pursue new markets.

II. Award Information

A. Type of Application

Only electronic applications will be accepted and they must be submitted through Grants.gov. *Hard copy applications will not be accepted.* Applications submitted for the Risk Management Education in Targeted States Program are new applications: there are no renewals. All applications will be reviewed competitively using the selection process and evaluation criteria described in Section V—Application Review Process. Each award will be designated as a Cooperative Agreement, which will require substantial involvement by RMA.

B. Funding Availability

There is no commitment by USDA to fund any particular application or make a specific number of awards. RMA intends to award approximately $5,000,000 (subject to availability of funds) in fiscal year 2012 to fund one or more cooperative agreement(s) not to exceed the maximum funding amount established for each of the Targeted States. The maximum funding amount anticipated for the agreement(s) in each Targeted State is as follows. An applicant must apply for funding for that Targeted State where the applicant intends to deliver the educational activities, and must limit its request for funding in a particular Targeted State based upon the funding levels available below.

Connecticut	$250,000
Delaware	287,000
Hawaii	246,000
Maine	259,000
Maryland	371,000
Massachusetts	239,000
Nevada	248,000
New Hampshire	216,000
New Jersey	282,000
New York	586,000
Pennsylvania	700,000
Rhode Island	206,000
Utah	316,000
Vermont	259,000
West Virginia	242,000
Wyoming	293,000
Total	$5,000,000

Funding amounts were determined by first allocating an equal amount of $200,000 to each Targeted State. Remaining funds were allocated on a pro rata basis according to each Targeted State's share of agricultural cash receipts reported in the National Agricultural Statistics Service (NASS) 2007 Agricultural Census, relative to the total for all Targeted States. Both the equal allocation and the pro rata allocation were totaled together and rounded to the nearest $1,000 to arrive at the funding limit for each Targeted State.

In the event that additional funds become available under this program or in the event that no application for a given Targeted State is recommended for funding by the evaluation panel, these additional funds, or unused funds for a particular Targeted State, may be allocated pro-rata to other awardees. These additional or unused funds may be offered to selected awardees for use in broadening the size or scope of awarded projects within the Targeted States in which funds were awarded, if such selected awardees agree to any changes to the project necessary determined by RMA to make use of the additional funds. The decision of whether any additional or unused funds are offered to other award recipients, and the pro-rata manner in which they may be distributed to recipients that are willing to make required adjustments to their awarded projects to accept such additional funds, is within the discretion of the FCIC Manager. RMA is not required to distribute any additional or unused funds to the awardees.

In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. All awards will be made and agreements finalized no later than September 30, 2012.

C. Location and Target Audience

The RMA Regional Offices that service the Targeted States are listed below. Staff from these respective RMA Regional Offices will provide the RMA substantial involvement for Targeted States projects conducted within the respective Regions.

Billings, MT Regional Office: (WY).

Davis, CA Regional Office: (HI, NV and UT).

Raleigh, NC Regional Office: (CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT and WV).

Each application must clearly designate the Targeted State where crop insurance educational activities for the project will be delivered in block 14 of the SF–424, ''Application for Federal Assistance.'' Applications without this designation in block 14 will be rejected. Applicants may apply to deliver education to producers in more than one Targeted State, but a separate application must be submitted for each Targeted State because applications will be compared to applications submitted for the same state. Any single application proposing to conduct educational activities in more than one Targeted State will be rejected.

D. Maximum Award

Any application that requests funding under this Announcement of more than the amount listed above for a project in a given Targeted State will be rejected.

E. Project Period

Projects will be funded for a period of up to one year from the project starting date.

F. Description of Agreement Award—Awardee Tasks

In conducting activities to achieve the purpose and goal of this program in a designated Targeted State, the awardee shall be responsible for performing the following tasks:

• Develop and conduct a promotional program in English or a non-English language to producers. If non-English language is used, a translation in English must be provided. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for crop insurance; (b) inform producers of the availability of crop insurance; (c) inform producers of the crop insurance sales closing dates prior to the deadline; and (d) inform producers (and may inform agribusiness professionals) in the designated Targeted State of training and informational opportunities.

• Deliver crop insurance training and informational opportunities in English or a non-English language to agricultural producers (and may deliver to agribusiness professionals) in the designated Targeted State in a timely manner, prior to crop insurance sales closing dates, in order for producers to make informed decisions regarding risk management tools prior to the crop insurance sales closing dates deadline. This delivery will include organizing and delivering educational activities using instructional materials that have been assembled to meet the local needs of agricultural producers. Activities must be directed primarily to agricultural producers, but may include those agribusiness professionals that frequently advise producers on crop insurance tools and decisions and shall use the information gained from these trainings to advise producers.

• Document all educational activities conducted under the cooperative agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The awardee shall also be required, if requested by RMA, to provide information to RMA-selected contractor(s) to evaluate all educational activities and advise RMA regarding the effectiveness of activities.

G. RMA Activities

RMA will be substantially involved during the performance of the funded project through RMA's three (3) Regional Offices identified earlier. Potential types of substantial involvement by these three (3) Regional Offices will include, but are not limited to, the following activities.

• Collaborate with the awardee in assembling, reviewing, and approving risk management materials for producers in the designated Targeted States.

• Collaborate with the awardee in reviewing and approving a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities in the Targeted States.

• Collaborate with the awardee on the delivery of education to producers and agribusiness professionals for the Targeted States. This collaboration shall include: (a) Reviewing and approving in advance all producer and agribusiness professional educational activities; (b) advising the awardee on technical issues related to crop insurance education and information; and (c) assisting the awardee in informing producers and agribusiness professionals about educational activity plans and scheduled meetings.

• Conduct an evaluation of the performance of the awardee in meeting the tasks and subtasks of the project.

• Assist in the selection of subcontractors and project staff.

Applications that do not contain substantial involvement by RMA will be rejected.

H. Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants include: State Departments of Agriculture, State Cooperative Extension Services; Federal, State, or tribal agencies; groups representing producers, community-based organizations or a coalition of community-based organization that has demonstrated experience in providing agricultural education or other agricultural-related services to producers; nongovernmental organizations; junior and four-year colleges or universities or foundations maintained by a college or university; private for-profit organizations; and other entities with the capacity to lead a program of risk management education for producers in one or more Targeted States.

1. Individuals are not eligible applicants.

2. Although an applicant may be eligible to compete for an award based on its status as the type of entity described immediately above, other factors may exclude an applicant from receiving Federal assistance under this program, which is governed by Federal law and regulations (e.g. debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or cooperative partnership; a determination of a violation of applicable ethical standards). Applications in which the applicant or any of the partners are ineligible or excluded persons will be rejected in their entirety.

3. Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this Announcement. However, such entities and their partners, affiliates, and collaborators for this Announcement shall not receive funding to conduct activities that are already required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC/RMA and the entity, or between FCIC/RMA and any of the partners; affiliates, or collaborators for awards under this Announcement. In addition, such entities and their partners, affiliates, and collaborators for this Announcement shall not be allowed to receive funding to conduct activities that could be perceived by producers as promoting the services or products of one company over the services or products of another company that provides the same or similar services or products. If applying for funding, such organizations must be aware of potential conflicts of interest and must describe in their application the specific actions they shall take to avoid actual and perceived conflicts of interest.

B. Cost Sharing or Matching Funding

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

IV. Application and Submission Information

A. Electronic Application Package

RMA will only accept electronic applications for this program. These electronic applications must be submitted via Grants.gov to the Risk Management Agency in response to this RFA. Prior to preparing an application, it is suggested that the Project Director (PD) first contact an Authorized Representative (AR) (also referred to as Authorized Organizational Representative or AOR) to determine if the organization is prepared to submit electronic applications through Grants.gov. If the organization is not prepared, the AR should see, *http://www.grants.gov/applicants/get_registered.jsp,* for steps for preparing to submit applications through Grants.gov.

Grants.gov assistance is available as follows:

- Grants.gov customer support, Toll Free: 1–800–518–4726, Business Hours: 24 Hours a day, Email: *support@grants.gov.*

B. Content and Form of Application Submission

The title of the application must include (1) The Targeted State, (2) the producer group to be reached, and (3) the educational topic(s) to be presented.

For an application to potentially be considered complete and valid, an application must include the following items, at a minimum:

1. A completed OMB Standard Form 424, ''Application for Federal Assistance.''
2. A completed OMB Standard Form 424–A, ''Budget Information—Non-construction Programs.''
3. A completed OMB Standard Form 424–B, ''Assurances, Non-constructive Programs.''
4. An Executive Summary of the Project (One (1) page).
5. A Proposal Narrative (Not to Exceed 15 single-sided pages in Microsoft Word), which shall also include a Statement of Work. The Statement of Work (SOW) must include each task and subtask associated with the work, the objective of each task and subtask, specific time lines for performing the tasks and subtasks, and the responsible party for completing the activities listed under each task and subtask including the specific responsibilities of partners and/or RMA. The SOW must be very clear on who does what, where, when, as well as the objective for each task and subtask. Letters of support for the applicant should be an appendix to the application and should not be included as part of the Proposal Narrative.
6. Budget Narrative (in Microsoft Excel) describing how the categorical costs listed on the SF 424–A are derived. The budget narrative must provide enough detail for reviewers to easily understand how costs were determined and how they relate to the tasks and subtask of the project.
7. Partnering Plan that includes how each partner of the applicant (who will be working on this project) shall aid in carrying out the specific tasks and subtasks. The Partnering Plan must also include ''Letters of Commitment'' from each partner who will do the specific task or subtask as identified in the SOW. The Letters must (1) be dated within 45 days of the submission and (2) list the specific tasks or subtasks the committed partner has agreed to do with the applicant on this project.
8. Project Plan of Operation in the Event of a Human Pandemic Outbreak (Pandemic Plan). RMA requires that project leaders submit a project plan of operation in case of a human pandemic event. The plan must address the concept of continuing operations as they relate to the project. This plan must include the roles, responsibilities, and contact information for the project team and individuals serving as back-ups in case of a pandemic outbreak.
9. Current and Pending Report. The application package from Grants.gov contains a document called the *Current and Pending Report.* On the Current and Pending Report you must state for this fiscal year if this application is a duplicate application or overlaps substantially with another application already submitted to or funded by another USDA Agency, including RMA, or other private organization. The percentage of each person's time associated with the work to be done under this project must be identified in the application. The total percentage of time for both ''Current'' and ''Pending'' projects must not exceed 100% of each person's time. Applicants must list all current public or private employment arrangements or financial support associated with the project or any of the personnel that are part of the project, regardless of whether such arrangements or funding constitute part of the project under this Announcement (supporting agency, amount of award, effective date, expiration date, expiration date of award, etc.). If the applicant has no projects to list, ''N/A'' should be shown on the form. An application submitted under this RFA that duplicates or overlaps substantially with any application already reviewed and funded (or to be funded) by any other organization or agency, including but not limited to other RMA, USDA, and Federal government programs, will not be funded under this program. RMA reserves the right to reject your application based on the review of this information.
10. A completed and signed OMB Standard Form LLL, ''Disclosure of Lobbying Activities.''
11. A completed and signed AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals.''

Applications that do not include the items listed above will be considered incomplete, will not receive further consideration, and will be rejected.

C. Funding Restrictions

Cooperative agreement funds under this RFA may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Purchase portable equipment (such as laptops, projectors, etc.)

d. Repair or maintain privately owned vehicles;

e. Pay for the preparation of the cooperative agreement application;

f. Fund political activities;

g. Purchase alcohol, food, beverage, or entertainment;

h. Lend money to support farming or agricultural business operation or expansion;

i. Pay costs incurred prior to receiving a cooperative agreement;

j. Provide scholarships;

k. Pay entrance fees or other expenses to conferences or similar activities; or

l. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

D. Limitation on Use of Project Funds for Salaries and Benefits

Total costs for salary and benefits allowed for projects under this Announcement shall be limited to not more than 70 percent reimbursement of the funds awarded under the cooperative partnership agreement. The reasonableness of the total costs for salary and benefits allowed for projects under this Announcement will be reviewed and considered by RMA as part of the application review process. Applications for which RMA does not consider the salary and benefits reasonable for the proposed application will be rejected, or will only be offered a cooperative agreement upon the condition of changing the salary and benefits structure to one deemed appropriate by RMA for that

application. The goal of the Targeted States Program is to maximize the use of the limited funding available for crop insurance education to producers in Targeted States.

E. Indirect Cost Rates

a. Indirect costs allowed for projects submitted under this announcement shall be limited to ten (10) percent of the total direct cost of the cooperative agreement. Therefore, when preparing budgets, applicants should limit their requests for recovery of indirect costs to the lesser of their institution's official negotiated indirect cost rate or 10 percent of the total direct costs.

b. RMA reserves the right to negotiate final budgets with successful applicants.

F. Other Submission Requirements

Applicants are entirely responsible for ensuring that RMA receives a complete application package by the closing date and time. RMA strongly encourages applicants to submit applications well before the deadline to allow time for correction of technical errors identified by Grants.gov. Application packages submitted after the deadline will be rejected.

G. Acknowledgement of Applications

Receipt of applications may be acknowledged by email, whenever possible; however it is the responsibility of the applicant to check Grants.gov for successful submission. Therefore, applicants are encouraged to provide email addresses in their applications. There will be no notification of incomplete, unqualified or unfunded applications until the award decisions have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number must be referenced in all correspondence submitted by any party regarding the application. If the applicant does not receive an acknowledgement of application receipt by 15 days following the submission deadline, the applicant must notify RMA's point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

A. Criteria

Applications submitted under the Targeted States program will be evaluated within each Targeted State according to the following criteria:

Project Impacts—Maximum 20 Points Available

Each application must demonstrate that the project benefits to producers warrant the funding requested. Applications will be scored according to the extent they can: (a) Identify the specific actions producers shall likely be able to take as a result of the educational activities described in the Proposal Narrative's Statement of Work (SOW); (b) identify the specific measures for evaluating results that shall be employed in the project; (c) reasonably estimate the total number of producers that shall be reached through the various methods and educational activities described in the Statement of Work; (d) identify the number of meetings that shall be held; (e) provide an estimate of the number of training hours that shall be held; (f) provide an estimated cost per producer, and (e) justify such estimates with specific information. Estimates for reaching agribusiness professionals may also be provided but such estimates must be provided separately from the estimates of producers. Reviewers' scoring will be based on the scope and reasonableness of the application's clear descriptions of specific expected actions producers shall accomplish, and well-designed methods for measuring the project's results and effectiveness. Applications using direct contact methods with producers will be scored higher.

Applications must identify the type and number of producer actions expected as a result of the projects, and how results shall be measured, in the following categories:

- Understanding risk management tools;
- Evaluating the feasibility of implementing various risk management options;
- Developing risk management plans and strategies;
- Deciding on and implementing a specific course of action (e.g., participation in crop insurance programs or implementation of other risk management actions).

Statement of Work (SOW)—Maximum 20 Points Available

Each application must include a clear and specific Statement of Work for the project as part of the Proposal Narrative. For each of the tasks contained in the Description of Agreement Award (see Section II, Award Information), the application must identify and describe specific subtasks, responsible entities including partners, expected completion dates, RMA substantial involvement, and deliverables that shall further the purpose of this program. Applications will obtain a higher score to the extent that the Statement of Work is specific, measurable and reasonable, has specific deadlines for the completion of tasks and subtasks, and relates directly to the required activities and the program purpose described in this Announcement.

Partnering—Maximum 20 Points Available

Each application must demonstrate experience and capacity to partner with and gain the support of producer organizations, agribusiness professionals, subject matter experts, and agricultural leaders to carry out a local program of education and information in a designated Targeted State. Each application must establish a written *Partnering Plan* that describes how each partner shall aid in carrying out the project goal and purpose stated in this announcement and should include letters of commitment dated no more than 45 days prior to submission of the relevant application stating that the partner has agreed to do this work. Each application must ensure this Plan includes a list of all partners working on the project, their titles, and how they will be contribute to the deliverables listed in the application. The Partnering Plan will not count towards the maximum length of the application narrative. Applications will receive higher scores to the extent that the application demonstrates: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad group of producers shall be reached within the Targeted State; (c) that partners are contributing to the project and involved in recruiting producers to attend the training; (d) that a substantial effort has been made to partner with organizations that can meet the needs of producers in the designated Targeted State; and (e) statements from each partner regarding the number of producers that partner is committed to recruit for the project that would support the estimates specified under the Project Impacts criterion.

Project Management—Maximum 20 Points Available

Each application must demonstrate an ability to implement sound and effective project management practices. Higher scores in this category will be awarded to applications that demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the designated Targeted State. Each application must

demonstrate that the Project Director has the capability to accomplish the project goal and purpose stated in this announcement by (a) having a previous or existing working relationship with the agricultural community in the designated Targeted State of the application, including being able to recruit approximately the number of producers to be reached in the application and/or (b) having established the capacity to partner with and gain the support of producer organizations, agribusiness professionals, and agribusiness leaders locally to aid in carrying out a program of education and information, including being able to recruit approximately the number of producers to be reached in this application. Applications must designate an alternate individual to assume responsibility as Project Director in the event the original Project Director is unable to finish the project. Applications that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective Targeted State will receive higher rankings in this category.

Budget Appropriateness and Efficiency—Maximum 20 Points Available

Applications must provide a detailed budget summary, both in narrative and in Microsoft Excel, that clearly explains and justifies costs associated with the project's tasks and subtasks. Applications will receive higher scores in this category to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the estimated cost of reaching each individual producer.

Bonus Points for Diversity Partnering—Maximum 25 Bonus Points Available

RMA is focused on adding diversity to this program. RMA may add up to an additional 25 points to the final paneled score of any submission demonstrating a *partnership with* another producer group or community based group that represent minority producers. The application must state in the Partnering Plan that a Diversity Partnership is in place as validated by a current Letter of Commitment that identifies the producer group or community based group partner that will represent minority producers.

''Minority'' producers are defined as:

- African American producers
- Asian American, Pacific Islander producers
- Hispanic producers
- Native American producers

B. Selection and Review Process

Applications will be evaluated using a two-part process. First, each application will be screened by USDA and RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the minimum requirements of this announcement or are incomplete will not advance to the second portion of the review process. Applications that meet announcement requirements will be grouped together for comparison by the Targeted State for which the application proposes to conduct the project and will be presented to a review panel for consideration in such groups. Thus, applications will only be compared against other applications for the same Targeted State.

Second, the review panel will meet in person or via live meeting teleconference to consider and discuss the merits of each application. The panel will consist of at least three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and/or public and private organizations, as needed. After considering the merits of all applications within a Targeted State, panel members will score each application according to the criteria and point values described above. The panel will then rank each application against others within the Targeted State according to the scores received.

The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the applicants recommended to receive awards for each Targeted State. An application receiving a total score less than 60 will not receive funding.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding under this Announcement is substantially similar to or duplicative of a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect to not fund that application under this program in whole or in part, depending upon the extent of the similarity or duplicity of applications. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

A. Award Notices

The award document will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to which the FCIC Manager has issued an award under the terms of this Request for Applications;

(2) Title of project;

(3) Name(s) and employing institution(s) of Project Directors chosen to direct and control approved activities;

(4) Identifying award number assigned by RMA;

(5) Project period, specifying the amount of time RMA intends to support the project without requiring recompeting for funds;

(6) Total amount of RMA financial assistance approved by the Manager of FCIC for the project period;

(7) Legal authority(ies) under which the award is issued;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Applicable award terms and conditions (see *http://www.rma.usda.gov/business/awards/awardterms.html* to view RMA award terms and conditions);

(10) Approved budget plan for categorizing allowable project funds to accomplish the stated purpose of the award; and

(11) Other information or provisions required by RMA to carry out its respective awarding activities or to accomplish the purpose of a particular award.

Following approval by the Manager of FCIC of the applications to be selected for funding, awardees whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the Manager of FCIC will enter into cooperative agreements with the awardees. After a cooperative agreement has been signed by all Parties (including RMA), RMA will extend to awardees, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the awardee by RMA must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and any applicable Federal law. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification to applicants for whom funding is denied will be sent to applicants after final funding decisions

have been made and awardees have been announced publicly. Reasons for denial of funding may include, but are not limited to, incomplete applications, applications with evaluation scores below 60, or applications with evaluation scores that are lower than those of other applications in a Targeted State. Debriefings will be offered to unsuccessful applicants.

B. Administrative and National Policy Requirements

1. Requirement to Use USDA Logo

Awardees of cooperative agreements will be required to use a USDA logo provided by RMA for all instructional and promotional materials if appropriate.

2. Requirement to Provide Project Information to RMA-selected Representative(s)

Awardees of cooperative agreements may be required to assist RMA in evaluating the effectiveness of its educational programs by notifying the RMA of upcoming training, meeting, and by providing documentation of educational activities, materials, and related information to any representative(s) selected by RMA for program evaluation purposes.

3. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

4. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will remain confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members may be made available. However, panelists will not be identified with the review of any particular application.

When an application results in a cooperative agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary must be clearly marked within an application, including the legal basis for such designation. The original copy and extra copies of all applications, regardless of whether the application results in an award, will be retained by RMA for a period of at least three years, then may be destroyed. Any copies of an application will be released only to the extent required by law. An application may be withdrawn at any time prior to the time when award decisions are made.

5. Audit Requirements

Awardees of cooperative agreements may be subject to audit.

6. Prohibitions and Requirements With Regards to Lobbying

All cooperative agreements will be subject to the requirements of 7 CFR part 3015, ''Uniform Federal Assistance Regulations.'' A signed copy of the certification and disclosure forms must be submitted with the application and are available at the address and telephone number listed in Section VII, Agency Contact.

Departmental regulations published at 7 CFR part 3018 imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative partnership agreements and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective awardees, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative partnership agreement or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires awardees and any subcontractors to complete a certification in accordance with Appendix A to Part 3018 and a disclosure of lobbying activities in accordance with Appendix B to Part 3018.: The law establishes civil penalties for non-compliance.

7. Applicable OMB Circulars

All cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars) *http://www.whitehouse.gov/omg/grants_circulars.*

8. Requirement To Assure Compliance With Federal Civil Rights Laws

Awardees and all partners/collaborators of all cooperative agreements funded as a result of this notice are required to know and abide by Federal civil rights laws, which include, but are not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and 7 CFR part 15. RMA requires that awardees submit an Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

9. Requirement To Participate in a Post Award Teleconference

RMA requires that project leaders participate in a post award teleconference, if conducted, to become fully aware of agreement requirements and for delineating the roles of RMA personnel and the procedures that shall be followed in administering the agreement and shall afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility.

10. Requirement To Participate in a Post Award Civil Rights Training Teleconference

RMA requires that project leaders participate in a post award Civil Rights and EEO training teleconference to become fully aware of Civil Rights and EEO law and requirements.

11. Requirement To Submit Educational Materials to the National AgRisk Education Library

RMA requires that awardees upload digital copies of all risk management educational materials developed as part of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting, if electronically reporting. RMA must be clearly identified as having provided funding for the materials.

12. Requirement To Submit Proposed Results to the National AgRisk Education Library

RMA requires that awardees submit results of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting, if electronically reporting. RMA must be clearly identified as having provided funding for the materials.

C. Reporting Requirements

Awardees shall be required to submit quarterly progress reports using the Performance Progress Report (OMB SF–PPR) as the cover sheet and quarterly financial reports (OMB SF 425)

throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period. The quarterly progress reports and final program reports MUST be submitted through the Results Verification System. The Web site address is for the Results Verification System is *www.agrisk.umn.edu/RMA/Reporting*.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties must contact: USDA–RMA–RME, phone: 202–720–0779, email: *RMA.Risk-Ed@rma.usda.gov*. You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov/aboutrma/agreements/*.

VIII. Additional Information

A. The Restriction of the Expenditure of Funds To Enter Into Financial Transactions

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (Pub. L. 112–55) contains the restriction of the expenditure of funds to enter into financial transactions Corporations that have been convicted of felonies within the past 24 months or that have federal tax delinquencies where the agency is aware of the felonies and/or tax delinquencies.

Section 738 (Felony Provision)

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation that was convicted (or had an officer or agency of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agent, and made a determination that this further action is not necessary to protect the interest of the Government.

Section 739 (Tax Delinquency Provision)

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that [has] any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

B. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals

Under the Federal Funding Accountability and Transparency Act of 2006, the applicant must comply with the additional requirements set forth in Attachment A regarding the Dun and Bradstreet Universal Numbering System (DUNS) Requirements and the CCR Requirements found at 2 CFR part 25. For the purposes of this RFA, the term ''you'' in Attachment A shall mean ''applicant.'' The applicant shall comply with the additional requirements set forth in Attachment B regarding Subawards and Executive Compensation. For the purpose of this RFA, the term ''you'' in Attachment B shall mean ''applicant''. The Central Contract Registry CCR is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit ''Get Registered'' at the Web site, *http://www.grants.gov*. Allow a minimum of 5 business days to complete the CCR registration.

C. Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—and CFDA No. 10.458 (Crop Insurance Education in Targeted States). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Attachment A

I. Central Contractor Registration and Universal Identifier Requirements

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS)

Numbers if you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions for Purposes of This Award Term

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at *http://www.ccr.gov*).
2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 1–866–705–5711) or the Internet (currently at *http://fedgov.dnb.comlwebform*).
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian Tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 10 of the attachment to OMB Circular A–I33, ''Audits of States, Local Governments, and Non-Profit Organizations'').

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

Attachment B

I. Reporting Subawards and Executive Compensation

a. Reporting of First-Tier Subawards

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.I. of this award term to *http://www.fsrs.gov*.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at *http://www.fsrs.gov* specify.

b. Reporting Total Compensation of Recipient Executives

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this award is $25,000 or more;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 780(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm*.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at *http://www.ccr.gov*.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 780(d) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm*.).

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions

For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210 of the attachment to OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'').

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a sub award from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

Signed in Washington, DC on March 26, 2012.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012–7902 Filed 4–2–12; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Status of Claims Against Households (Form FNS–209)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection for the FNS–209, Status of Claims Against Households. This is a revision of an approved collection.

The purpose of the Status of Claims Against Households is to provide a standardized format for State agencies submitting reports to the Food and Nutrition Service. Sections 11, 13, and 16 of the Food and Nutrition Act of 2008 (the Act) are the basis for the information collected on Form FNS–209, Status of Claims Against Households. Section 11 of the Act requires that State agencies submit reports and other information that are necessary to determine compliance with the Act and its implementing regulations. Section 13 of the Act requires State agencies to establish claims and collect overpayments against households. Section 16 of the Act authorizes State agencies to retain a portion of what is collected. The FNS–209 is used as the mechanism for State agencies to report the claim establishment, collection and retention amounts.

DATES: Written comments must be submitted on or before June 4, 2012.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jane Duffield, Branch Chief, State Administration Branch, Program Accountability and Administration Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 818, Alexandria, VA 22302. You may also download an electronic version of this notice at *http://www.fns.usda.gov/fsp/rules/regulations/default.htm* and comment via email at *SNAPHQ-Web@fns.usda.gov* or use the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 822, Alexandria, Virginia 22302.

All comments to this notice will be included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Jane Duffield at (703) 605–4385.

SUPPLEMENTARY INFORMATION:

Title: Status of Claims Against Households.

OMB Number: 0584–0069.

Form Number: FNS–209.

Expiration Date: August 31, 2012.

Type of Request: Extension of currently approved collections.

Abstract: SNAP regulations at 7 CFR 273.18 require that State agencies establish, collect and efficiently manage SNAP recipient claims. Paragraph 7 CFR 273.18(m)(5) requires State agencies to submit at the end of every quarter the completed Form FNS–209, Status of Claims Against Households. The information required for the FNS–209 report is obtained from a State accounting system responsible for establishing claims, sending demand letters, collecting claims, and managing other claim activity. In general, State agencies must report the following totals on the FNS–209: the current outstanding aggregate claim balance; claims established; collections; any balance and collection adjustments; and the amount to be retained for collecting non-agency error claims. The burden associated with establishing claims (demand letters) and the Treasury Offset Program, both which are also used to complete the FNS–209, are already approved under OMB burden numbers 0584–0492, expiration date 9/30/2014, and 0584–0446, expiration date 02/28/2013, respectively. The estimated annual burden is 636 hours. This is the same as the currently approved burden. This estimate includes the time it takes each State agency to accumulate and tabulate the data necessary to complete the report four times a year. State agencies must retain the records that support the FNS–209 data for 3 years; because this reflects three-year routine business practice and the Program is not imposing any recordkeeping hours in this data collection.

Affected Public: State, Local and Tribal Government Agencies.

Number of Respondents: 53 State Agencies.

Number of Responses per Respondent: 4.

Total Annual Responses: 212.

Reporting Time per Response: 3 Hours.

Estimated Annual Reporting Burden Hours: 636.

Dated: March 26, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012–7991 Filed 4–2–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Input From Stakeholders Regarding the Proposed Crop Protection Competitive Grants Program

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of public meeting and request for stakeholder input.

SUMMARY: The President's budget proposal for FY 2013 consolidates six funding lines addressing pest management and integrated pest management (IPM) issues into a single budgetary line, called the Crop Protection Program (CPP). The six budgetary lines being consolidated are Expert Integrated Pest Management Decision Support System, IPM and Biological Control, Minor Crop Pest Management/IR–4, Pest Management Alternatives, Smith-Lever 3(d) Pest Management, and Regional Pest Management Centers. The new program is described broadly to encompass all of the functions of the existing programs. A listening session was previously announced in the **Federal Register** on Wednesday, February 1, 2012 to be held on March 29 to guide future Request for Applications (RFAs) of the Extension of IPM Coordination and Support Program (EIPM–CS), one of the programs affected by this realignment. That session has been redefined to collect stakeholder input on the broader Crop Protection topic. Additional opportunities for comment are also being scheduled. By this notice, NIFA is designated to act on behalf of the Secretary of Agriculture in soliciting public comment from interesting persons regarding the future design and implementation of this proposed program.

DATES: Four public meetings will be held to collect stakeholder input. The first of those meetings will be on Thursday, March 29, 2012 from 2 p.m. to 5 p.m. Central time. Successive meetings will be held on Wednesday, April 11, 2012 from 1 p.m. to 5 p.m. Eastern time; Monday, April 16, 2012 from 1 p.m. to 5 p.m. Eastern time; and Tuesday, May 1, 2012 from 1 p.m. to 5 p.m. Eastern time. All comments not otherwise presented or submitted for the record at one of the meetings must be submitted by close of business Thursday, May 31, 2012, to assure consideration in the development of the proposed FY 2013 Crop Protection RFA.

ADDRESSES: The March 29, 2012 meeting will be held in the Nashville Meeting Room, Memphis Marriot Downtown Hotel, 250 North Main Street, Memphis, Tennessee 38103, phone—888–557–8740 (toll-free in USA); 901–527–7300 (outside USA). The April 11 and May 1, 2012 meetings will be held by conference call (audio) and internet (visual only). Connection details for those meetings will be posted on the National Institute of Food and Agriculture Web site (*www.nifa.usda.gov*) or by contacting the individual listed under **FOR FURTHER INFORMATION** (below). The April 16, 2012 meeting will be held in room 1410A–D, Waterfront Centre Building, National Institute of Food and Agriculture, United States Department of Agriculture, 800 9th Street SW., Washington, DC 20024. Attendees will need to provide photo identification to be admitted in the building. Please allow sufficient time to go through security.

You may submit comments, identified by NIFA–2012–0006, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: CropProtection@nifa.usda.gov. Include NIFA–2012–0006 in the subject line of the message.

Fax: (202) 401–1782.

Mail: Paper, disk or CD–ROM submissions should be submitted to Crop Protection comments; Division of Plant Protection, Institute of Food Production and Sustainability, National Institute of Food and Agriculture, U.S. Department of Agriculture; STOP 2220, 1400 Independence Avenue SW., Washington, DC 20250–2220.

Hand Delivery/Courier: Crop Protection; Division of Plant Protection, Institute of Food Production and Sustainability, National Institute of Food and Agriculture, U.S. Department of Agriculture; Room 3105, Waterfront Centre, 800 9th Street SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and the identifier NIFA–2012–0006. All comments received will be posted to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Ley, (202) 401–6195 (phone), (202) 401–1782 (fax), or *CropProtection@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Additional Meeting and Comment Procedures

Because of the diversity of subjects, and to aid participants in scheduling their attendance, the following schedule is anticipated for the March 29, 2012, meeting:

2–2:20 p.m. Introduction to the proposed CPP.

2:20–5 p.m. Stakeholder input on general administration of the proposed CPP, including: solicitation of proposals, types of projects and awards, length of awards, evaluation criteria, and protocols to ensure the widest program participation, allocation of funds including protocols to solicit and consider stakeholder input, determination of priority areas, and determination of activities to be supported.

5 p.m. Adjourn.

Persons wishing to present oral comments at the March 29, 2012, meeting are requested to pre-register by contacting Elizabeth Ley, (202) 401–6195 (phone), by fax at (202) 401–1782, or by email to *CropProtection@nifa.usda.gov.*

Participants may reserve one 5-minute comment period. More time may be available, depending on the number of people wishing to make a presentation. Reservations for oral comments will be confirmed on a first-come, first-served basis. All other attendees may register at the meeting.

Written comments may also be submitted for the record at the meeting. All comments not presented or submitted for the record at the meeting must be submitted by close of business Thursday, May 31, 2012, to be considered in the development of the proposed FY 2013 CPP. All comments and the official transcript of the meeting, when they become available, may be reviewed on the NIFA Web page for six months. Participants who require a sign language interpreter or other special accommodations should contact Ms. Ley as directed above.

Background and Purpose

Current grant programs associated with this consolidation and their current funding authorities include Expert Integrated Pest Management Decision Support program (EIPMDSS)—(7 U.S.C. 450i Section (c)(1)(B)); Minor Crop Pest Management Program (IR–4)—(Section 2(c)(1)(B) of the

Competitive, Special and Facilities Research Grant Act (7 U.S.C. 450i)); Pest Management Alternatives Program (PMAP)—(Section 2(c)(1)(A) of the Competitive, Special, and Facilities Research Grant Act, (Pub. L. No. 89–106), as amended (7 U.S.C. 450i(c)(1)(A)); Regional IPM Competitive Grants Program (RIPM)—(Section 2(c)(1)(B) of the Competitive, Special, and Facilities Research Grant Act (Pub. L. No. 89–106, as amended (7 U.S.C. 450i(c)(1)(B)) and Section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d)); Extension Integrated Pest Management Coordination and Support (EIPM–CS)—(Section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d) as amended by Section 7403 of the FCEA) (Pub. L. 110–246), and the Regional IPM Centers—(Section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7626), as reauthorized by Section 7306 of the FCEA of 2008) (Pub. L. 110–246)). The Crop Protection Program, as proposed, would be authorized under Section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7626), as reauthorized by Section 7306 of the FCEA) (Pub. L. 110–246). This funding authority will allow eligibility for four-year degree granting institutions and provide for the recovery of indirect costs. The intent of the listening sessions is to gather stakeholder input on program focus, function and design. Additional detail can be found in the explanatory notes to the President's budget, found at *http://www.obpa.usda.gov/17nifa2013notes.pdf*. USDA–NIFA suggests the following questions be addressed in drafting comments on the program. Prior to the listening session, National Program Leaders presented stakeholders with the following questions:

1. What conceptual elements are needed in the new CPP to address research education and extension in pest management to ensure global food security and other major societal challenges are addressed?

2. Is regionalization a sound concept for coordination of IPM programs? Why or why not?

3. What administrative functions are needed to adequately manage elements of the new program?

4. Should the program be delivered through a state, regional, or national structure or should there be a blend of elements to address regional and national interests?

5. How should resources be apportioned across the functional areas and across regions if regionalization is an element of the program?

6. If regional program delivery is a part of the concept, what critical benefits does this approach provide?

7. If a regional structure is deployed, what should it look like?

8. Should the CPP be limited to short-term projects or should longer-term ongoing programs also be supported?

9. What size should the awards be for research, education or extension? What scope should projects encompass?

10. What portion of the Crop Protection Program budget should be dedicated to each of the five IPM program areas: (a) Plant Protection Tactics and Tools; (b) Diversified IPM Systems; (c) Enhancing Agricultural Biosecurity; (d) IPM for a Sustainable Society; and (e) Development of the Next Generation of IPM Scientists.

The March, April and May 2012, Listening Sessions are scheduled to assist NIFA leadership in more fully addressing stakeholder needs and assuring that the CPP has influence on the discovery of new IPM knowledge, IPM principles are adopted, and end users are best served.

Implementation Plans

NIFA plans to consider stakeholder input received from these public meetings as well as other written comments in developing the FY 2013 program guidelines, dependent on Congressional appropriation. NIFA anticipates releasing the proposed FY 2013 RFA(s) by winter 2012–13.

Dated: Done at Washington, DC, this 23rd day of March 2012.

Chavonda Jacobs-Young,

Acting Director, National Institute of Food and Agriculture.

[FR Doc. 2012–7987 Filed 4–2–12; 8:45 am]

BILLING CODE 3410–22–P

ARCTIC RESEARCH COMMISSION

Reports and Updates on Programs and Research Projects

Notice is hereby given that the U.S. Arctic Research Commission will hold its 97th meeting in Montreal, Quebec, Canada, on April 28, 2012. The business session, open to the public, will convene at 8:30 a.m.

The Agenda items include:

(1) Call to order and approval of the agenda.

(2) Approval of the minutes from the 96th meeting.

(3) Commissioners and staff reports.

(4) Discussion and presentations concerning Arctic research activities.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

If you plan to attend this meeting, please notify us via the contact information below. Any person planning to attend who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission of those needs in advance of the meeting.

Contact person for further information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

John Farrell,

Executive Director.

[FR Doc. 2012–7826 Filed 4–2–12; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Requirements for Approved Construction Investments

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, as amended.

DATES: Written comments must be submitted on or before June 4, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th Street and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John Cobb, Program Analyst, Office of Regional Affairs, Room 7009, Economic Development Administration, Washington, DC 20230, telephone (202) 482–0951, facsimile (202) 482–2838 (or via the Internet at *John.f.cobb@eda.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The mission of the Economic Development Administration (EDA) is to lead the Federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. In order to effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance.

The *Summary of EDA Construction Standards* (commonly referred to as the ''bluebook'') and the *Standard Terms and Conditions for Construction Projects,* as well as any special conditions incorporated into the terms and conditions at the time of award, supplement the requirements that apply to EDA-funded construction projects. The information collected is used to monitor recipients' compliance with EDA's statutory and regulatory requirements and specific terms and conditions relating to individual awards. EDA also uses the information requested to analyze and evaluate program performance.

II. Method of Collection

Paper and electronic submissions.

III. Data

OMB Control Number: 0610–0096.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Current recipients of EDA construction (Public Works or Economic Adjustment) assistance, to include (1) cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes.

Estimated Number of Annual Responses: 4,200.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 8,400.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 29, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–7948 Filed 4–2–12; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Property Management

AGENCY: Economic Development Administration (EDA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, as amended.

DATES: Written comments must be submitted on or before June 4, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th Street and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John Cobb, Program Analyst, Office of Regional Affairs, Room 7009, Economic Development Administration, Washington, DC 20230, telephone (202) 482–0951, facsimile (202) 482–2838 (or via the Internet at *John.f.cobb@eda.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The mission of the Economic Development Administration (EDA) is to lead the Federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. In order to effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. A recipient must request in writing EDA's approval to undertake an incidental use of property acquired or improved with EDA's investment assistance (*see* 13 CFR 314.3 of EDA's regulations). This collection of information allows EDA to determine whether an incidental use of property acquired or improved with EDA investment assistance is appropriate. If a recipient wishes EDA to release its real property or tangible personal property interests before the expiration of the property's estimated useful life, the recipient must submit a written request to EDA and disclose to EDA the intended future use of the real property or the tangible personal property for which the release is requested (*see* 13 CFR 314.10 of EDA's regulations). This collection of information allows EDA to determine whether to release its real property or tangible personal property interests.

II. Method of Collection

Paper and electronic submissions.

III. Data

OMB Control Number: 0610–0103.

Agency Form Number(s): None.

Type of Review: Ad hoc submission (only when a recipient makes a request).

Affected Public: Current or past recipients of EDA construction (Public Works or Economic Adjustment) assistance, to include (1) cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes.

Estimated Number of Annual Responses: 150 (54 incidental use requests; 96 for requests to release EDA's Property interest).

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 413.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 29, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–7968 Filed 4–2–12; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 3, 2012.

SUMMARY: The Department of Commerce (the ''Department'') has determined that requests for four new shipper reviews (''NSRs'') of the antidumping duty order on certain frozen fish fillets (''fish'') from the Socialist Republic of Vietnam (''Vietnam'') meet the statutory and regulatory requirements for initiation. The period of review (''POR'') for these NSRs is August 1, 2011, through January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Seth Isenberg, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–0588.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on fish from Vietnam was published in the **Federal Register** on August 12, 2003.[1] On February 15, and 28, 2012, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214, the Department received NSR requests from Quang Minh Seafood Co., Ltd., Dai Thanh Seafoods Company Limited, Fatifish Company Limited, and Hoang Long Seafood Processing Co., Ltd. (collectively, ''requesting companies''). The requesting companies certified that they are producers and exporters of the subject merchandise upon which the requests were based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), the requesting companies certified that they did not export subject merchandise to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), the requesting companies certified that, since the initiation of the investigation, they have never been affiliated with any Vietnamese exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), the requesting companies also certified that their export activities were not controlled by the central government of Vietnam.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), the requesting companies submitted documentation establishing the following: (1) The date on which they first shipped subject merchandise for export to the United States; (2) the volume of their first shipment; and (3) the date of their first sale to an unaffiliated customer in the United States.[2]

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we find that the requests submitted by the requesting companies meet the threshold requirements for initiation of NSRs for shipments of fish from Vietnam produced and exported by the requesting companies.[3] The POR is August 1, 2011, through January 31, 2012.[4] The Department intends to issue the preliminary results of these NSRs no later than 180 days from the date of initiation, and the final results no later than 270 days from the date of initiation.[5]

It is the Department's usual practice, in cases involving non-market economies (''NMEs''), to require that a company seeking to establish eligibility for an antidumping duty rate separate from the NME entity-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to the requesting companies, which will include a section requesting information with regard to the requesting companies' export activities for separate rate purposes. Each NSR will proceed if the responses provide sufficient indication that the requesting companies are not subject to either *de jure* or *de facto* government control with respect to their export of subject merchandise.

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the requesting companies in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because the requesting companies certified that they both produced and exported the subject merchandise, the sale of which is the basis for each new shipper review request, we will apply the bonding privilege to the requesting companies only for subject merchandise which the requesting companies both produced and exported.

Interested parties requiring access to proprietary information in these NSRs should submit applications for disclosure under administrative protective order, in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

[1] *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003).

[2] *See also* ''Memorandum to the File, from Scot Fullerton, Program Manager, ''Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Placing CBP data on the record,'' dated concurrently with this notice.

[3] *See* ''Memorandum to the File, from Scot Fullerton, Program Manager, ''Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: New Shipper Initiation Checklists,'' dated concurrently with this notice.

[4] *See* 19 CFR 351.214(g)(1)(i)(B).

[5] *See* section 751(a)(2)(B)(iv) of the Act.

Dated: March 28, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7979 Filed 4–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Howard Hughes Medical Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated 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 Avenue NW., Washington, DC.

Docket Number: 11–074. Applicant: Howard Hughes Medical Institute, Chevy Chase, MD 20815. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 12240, February 29, 2012.

Docket Number: 12–002. Applicant: National Center for Toxicological Research, Jefferson, AR 72079. Instrument: Electron Microscope. Manufacturer: JEOL Instruments, Japan. Intended Use: See notice at 77 FR 12240, February 29, 2012.

Docket Number: 12–004. Applicant: Max Planck Florida Institute, Jupiter, FL 33458. Instrument: Freeze Fracture/Freeze Etch device. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 77 FR 12240, February 29, 2012.

Docket Number: 12–005. Applicant: VA Palo Alto Health Care System, Palo Alto, CA 94304–1207. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 12240, February 29, 2012.

Docket Number: 12–006. Applicant: William Patterson University, Wayne, NJ 07470. Instrument: Electron Microscope. Manufacturer: Hitachi High Technologies America, Inc., Japan. Intended Use: See notice at 77 FR 12240, February 29, 2012.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: March 26, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–7984 Filed 4–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda for an open meeting of the United States Travel and Tourism Advisory Board (Board). The agenda may change to accommodate Board business. The final agenda will be posted on the Department of Commerce Web site for the Board at *http://tinet.ita.doc.gov/TTAB/TTAB_Home.html*, at least one week in advance of the meeting.

DATES: April 23, 2012, 9 a.m.–11 a.m. Pacific Daylight Time (PDT).

ADDRESSES: The meeting will be held at the Los Angeles Convention Center, 1201 South Figueroa Street, Los Angeles, California. The room number will be posted on the Board Web site (*http://tinet.ita.doc.gov/TTAB/TTAB_Home.html*) at least one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *jennifer.pilat@trade.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Board was re-chartered in August 2011, to advise the Secretary of Commerce on matters relating to the U.S. travel and tourism industries.

Topics to be considered: This will be the first meeting of the Board since these members were appointed in January. During the meeting, the Board will discuss the work it intends to take on during this charter term and will likely make recommendations on the subcommittees needed to undertake that work. Representatives from the Departments of State, the Interior and Transportation will provide updates on their respective agencies' work relating to the U.S. travel and tourism industries and the Board will be provided an update on the work of the Task Force on Travel and Competitiveness (created by E.O. 13597, *Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness,* 77 FR 3373).

Public Participation: The meeting will be open to the public and will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Because of building security and logistics, all attendees must pre-register no later than 5 p.m. Eastern Daylight Time (EDT) on Friday, April 13, 2012 with Jennifer Pilat, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone 202–482–4501, *oacie@trade.gov*. Please specify any requests for sign language interpretation, other auxiliary aids, or other reasonable accommodation no later than 5 p.m. EDT on April 13, 2012, to Jennifer Pilat at the contact information above. Last minute requests will be accepted, but may be impossible to fill.

No time will be available for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. EDT on April 13, 2012, to ensure transmission to the Board prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting. Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: March 28, 2012.

Jennifer Pilat,

Executive Secretary, United States Travel and Tourism Advisory Board.

[FR Doc. 2012–7974 Filed 4–2–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Proposed Information Collection; Comment Request; Online Customer Relationship Management (CRM)/ Performance Databases, the Online Phoenix Database, and the Online Opportunity Database

AGENCY: Minority Business Development Agency (MBDA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 4, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Cynthia Rios, Program Management Unit Supervisor, MBDA Office of Business Development, (202) 482–1940, or via electronic mail at *crios@mbda.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

As part of its national service delivery system, MBDA awards cooperative agreements each year to fund the provision of business development services to eligible minority business enterprises (MBEs). The recipient of each cooperative agreement is competitively selected to operate one of the following business center programs: (1) An MBDA Business Center or (2) a Native American Business Enterprise Center (NABEC). In accordance with the Government Performance Results Act (GPRA), MBDA requires all center operators to report basic client information, service activities and progress on attainment of program goals via the Online CRM/Performance Databases. The data collected through the Online CRM/Performance Databases is used to regularly monitor and evaluate the progress of MBDA's funded centers, to provide the Department and OMB with a summary of the quantitative information that it requires about government supported programs, and to implement the GPRA. This information is also summarized and included in the MBDA Annual Performance Report, which is made available to the public.

Additionally, NABEC program award recipients are required to list MBEs to conduct business in the United States in the Online Phoenix Database. This listing is used to match those registered MBEs with opportunities entered in the Online Opportunity Database by public and private sector entities. The MBEs may also self-register via the Online Phoenix Database for notification of potential business opportunities.

Revision: In Fiscal Year 2011 MBDA developed and implemented a new Customer Relationship Management/ Performance Database to reflect the requirements of the redesigned MBDA Business Center program. The streamlining of certain administrative and reporting requirements for the new program are reflected in the system, and resulted in a decrease in the overall estimate of burden hours for users under the new program structure. The NABEC program will continue to utilize the original Performance, Phoenix and Opportunity databases until the program is redesigned, which is planned for completion during Fiscal Year 2012.

II. Method of Collection

Information will be collected electronically.

III. Data

OMB Control Number: 0640–0002.

Form Number(s): None.

Type of Review: Regular submission (revision and extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations; not-for-profit institutions; individuals or households; Federal, State, Local or Tribal government.

Estimated Number of Respondents: 2,633.

Estimated Time per Response: 1 minute to 210 minutes, depending on the function.

Estimated Total Annual Burden Hours: 4,516.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 29, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–7973 Filed 4–2–12; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Public Workshop: ''Designing for Impact: Workshop on Building the National Network for Manufacturing Innovation''

AGENCY: Advanced Manufacturing National Program Office, National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The Advanced Manufacturing National Program Office (AMNPO), housed at the National Institute of Standards and Technology (NIST), announces the first of a series of public workshops entitled ''Designing for Impact: Workshop on Building the National Network for Manufacturing Innovation.'' The workshops will provide a forum for the AMPNO to introduce the National Network for Manufacturing Innovation (NNMI) and its regional components, Institutes for Manufacturing Innovation (IMIs). The workshops will also provide a forum for public discussion of this new initiative, which President Obama announced on March 9, 2012. The discussion will focus on the following topics: Technologies with Broad Impact, Institute Structure and Governance, Strategies for Sustainable Institute Operations, and Education and Workforce Development.

DATES: The public workshop will be held on Wednesday, April 25, 2012

from 8 a.m. until 3 p.m. Eastern time. On-line registration for the workshop will close at 5 p.m. Eastern time on Friday, April 20, 2012.

ADDRESSES: The public workshop will be held at The Curtis R. Priem Experimental Media and Performing Arts Center (EMPAC); Rensselaer Polytechnic Institute, Troy, NY, 12180. EMPAC is located at the corner of 8th Street and College Avenue, in Troy, NY. Members of the public wishing to attend the public workshop may register online at: *http://events.energetics.com/AMNPOimpact*.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schen at 301–975–6741 or by email at *michael.schen@nist.gov;* or Jacqueline Calhoun at 301–975–2555 or by email at *jacqueline.calhoun@nist.gov.* Additional information may be found at: See *http://www.manufacturing.gov/amp/event_042512.html* for further details.

SUPPLEMENTARY INFORMATION:

Legal Authority: 15 U.S.C. 272(b)(1).

The proposed NNMI initiative focuses on strengthening and ensuring the long-term competitiveness and job-creating power of U.S. manufacturing. The constituent IMIs will bring together industry, universities and community colleges, federal agencies, and U.S. states to accelerate innovation by investing in industrially-relevant manufacturing technologies with broad applications to bridge the gap between basic research and product development, provide shared assets to help companies—particularly small manufacturers—access cutting-edge capabilities and equipment, and create an unparalleled environment to educate and train students and workers in advanced manufacturing skills. The President's proposed FY 2013 budget includes $1 billion for this proposed initiative.

Each IMI will serve as a regional hub of manufacturing excellence, providing the innovation infrastructure to support regional manufacturing and ensuring that our manufacturing sector is a key pillar in an economy that is built to last. Each IMI also will have a well-defined technology focus to address industrially-relevant manufacturing challenges on a large scale and to provide the capabilities and facilities required to reduce the cost and risk of commercializing new technologies.

In his announcement, President Obama proposed building a national network consisting of up to 15 IMIs.

Individuals planning to attend the public workshop must preregister. See registration information in the **DATES** and **ADDRESSES** sections above.

See the link below for the announcements of additional workshops:

See *http://www.manufacturing.gov/amp/ampevents.html.*

Future workshops will also be announced in the **Federal Register**.

In the near future, the AMNPO plans to issue a Request for Information (RFI), seeking public comment on specific questions related to the structure and operations of the NNMI and IMIs. The RFI will be published in the **Federal Register**.

Dated: March 28, 2012.

Phillip Singerman,

Associate Director for Innovation and Industry Services.

[FR Doc. 2012–7981 Filed 4–2–12; 8:45 am]

BILLING CODE 3510–13–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0014]

RIN 3170–AA06

Fair Credit Reporting Act Disclosures

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice regarding charges for certain disclosures under the Fair Credit Reporting Act.

SUMMARY: The Bureau of Consumer Financial Protection (''Bureau'') announces that the ceiling on allowable charges under Section 612(f) of the Fair Credit Reporting Act (''FCRA'') will increase from $11.00 to $11.50 effective April 3, 2012. The Bureau is required to increase the $8.00 amount referred to in Section 612(f)(1)(A)(i) of the FCRA on January 1 of each year, based proportionally on changes in the Consumer Price Index (''CPI''), with fractional changes rounded to the nearest fifty cents. The CPI increased 40.75 percent between September 1997, the date the FCRA amendments took effect, and September 2011. This increase in the CPI, and the requirement that any increase be rounded to the nearest fifty cents, results in a maximum allowable charge of $11.50.

DATES: Effective April 3, 2012.

FOR FURTHER INFORMATION CONTACT: Michael G. Silver, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, 202–435–7700.

SUPPLEMENTARY INFORMATION: Section 612(f)(1)(A) of the Fair Credit Reporting Act (the ''FCRA'') provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to Section 609 of the FCRA.[1] Section 612(f)(1)(A)(i) of the FCRA provides that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609 of the FCRA, the charge shall not exceed $8.00 and shall be indicated to the consumer before making the disclosure. Section 612(f)(2) of the FCRA states that the Bureau shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents. In 2011, the responsibility for performing this task was transferred from the Federal Trade Commission to the Bureau pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[2]

Section 211(a)(2) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') added a new Section 612(a) to the FCRA that gives consumers the right to request free annual disclosures once every 12 months. The maximum allowable charge established by this notice does not apply to requests made under that provision. The charge does apply when a consumer who orders a file disclosure has already received a free annual disclosure and does not otherwise qualify for an additional free disclosure.

The Bureau is using the $8.00 amount set forth in Section 612(f)(1)(A)(i) of the FCRA as the baseline for its calculation of the increase in the ceiling on reasonable charges for certain disclosures made under Section 609 of the FCRA. Since the effective date of the amended FCRA was September 30, 1997, the Bureau calculated the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September 2011. The Bureau then determined what modification, if any, from the original base of $8.00 should be made effective for 2012, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2011, the Consumer Price Index for all urban consumers and all items increased by 40.75 percent—from

[1] This provision, originally Section 612(a), was added to the FCRA in September 1996 and became effective in September 1997. It was relabeled Section 612(f) by Section 211(a)(1) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act''), Public Law 108–159, which was signed into law on December 4, 2003.

[2] Public Law 111–203, Title X, Section 1088.

an index value of 161.2 in September 1997 to a value of 226.889 in September 2011. An increase of 40.75 percent in the $8.00 base figure would lead to a new figure of $11.26. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the maximum allowable charge is $11.50. The Bureau therefore determines that the maximum allowable charge for the year 2012 will be $11.50, effective April 3, 2012.

Dated: March 26, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–7916 Filed 4–2–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0079; Docket 2012–0076; Sequence 13]

Federal Acquisition Regulation; Information Collection; Corporate Aircraft Costs

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning corporate aircraft costs.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 4, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0079, Corporate Aircraft Costs, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0079, Corporate Aircraft Costs'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0079, Corporate Aircraft Costs''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0079, Corporate Aircraft Costs'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0079, Corporate Aircraft Costs.

Instructions: Please submit comments only and cite Information Collection 9000–0079, Corporate Aircraft Costs, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Contract Policy Division, GSA, (202) 501–3221 or via email *edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Government contractors that use company aircraft must maintain logs of flights containing specified information (e.g., destination, passenger name, purpose of trip, etc.). This information, as required by FAR 31.205–46, Travel Costs, is used to ensure that costs of owned, leased or chartered aircraft are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to such contracts.

B. Annual Reporting Burden

Number of Respondents: 3,000.

Responses per Respondent: 1.

Total Responses: 3,000.

Average Burden per Response: 6 hours.

Total Burden Hours: 18,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0079, Corporate Aircraft Costs, in all correspondence.

Dated: March 27, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–7944 Filed 4–2–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of decision.

SUMMARY: The Department of Education (Department) gives notice that, on May 23, 2011, an arbitration panel rendered a decision in the matter of *Carole Morris* v. *Kentucky Office for the Blind,* Case No. R–S/09–5. This panel was convened by the Department under the Randolph-Sheppard Act (Act) after the Department received a complaint filed by Carole Morris (Complainant).

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Mary Yang, U.S. Department of Education, 400 Maryland Avenue SW., room 5162, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–6327. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Act, 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Complainant alleged that the Kentucky Office for the Blind, the State licensing agency (SLA), violated the Act and its implementing regulations in 34 CFR part 395. Complainant alleged that the SLA violated the Act, implementing regulations and State rules and

regulations by improperly administering the policies and procedures of the Kentucky Randolph-Sheppard Vending Facility Program in Complainant's bid to manage the laundry services at the United States Penitentiary McCreary (McCreary Prison) at Pine Knot, Kentucky, administered by United States Department of Justice, Federal Bureau of Prisons.

Complainant was licensed as a Randolph-Sheppard vendor on March 8, 2004. In April 2004, the SLA was approached by McCreary Prison regarding the possibility of installing a laundry vending facility consisting of washer and dryer vending machines at McCreary Prison.

The SLA informed staff at McCreary Prison that the SLA would provide the services or would work out an arrangement with a third-party contractor. McCreary Prison informed the SLA that it would require a 15 percent commission on the gross sales up front. In May 2005, the SLA agreed to McCreary Prison's terms and the SLA and McCreary Prison officials entered into an Intergovernmental Agreement (IGA) whereby the SLA would provide the laundry services at McCreary Prison.

Following the signing of the IGA between the SLA and McCreary Prison officials, the SLA negotiated a contract with the third-party contractor to install, operate and repair the laundry vending machines for McCreary Prison. Additionally, the SLA developed a subcontract with the third-party contractor to pay 5 percent commission on laundry royalties to Complainant in exchange for the assignment of laundry vending rights.

Thereafter, the laundry vending facility at McCreary Prison produced income and Complainant received commissions. The SLA also received 5 percent of the net proceeds of the laundry vending facility income as set aside fees from Complainant. The set aside fees were used to help pay for the health insurance costs of the vendors. On May 19, 2006, McCreary Prison decided to terminate the laundry vending facility contract and requested that the SLA remove the laundry vending machines by July 1, 2006.

On July 25, 2007, the third-party contractor filed a lawsuit against the SLA for alleged injuries suffered because of the contract termination. The third-party contractor also filed a lawsuit against Complainant for breach of contract since she received commissions from the sales at the laundry vending facility at McCreary Prison. On August 8, 2007, Complainant contacted the SLA to request legal services or payment of legal fees. However, legal counsel for the SLA informed Complainant that the SLA would not pay her legal expenses since she was not an employee of the State. On March 25, 2008, Complainant filed a request for an evidentiary hearing with the SLA concerning its denial of her request for payment of legal fees.

On September 30, 2008, Complainant filed an amended grievance with the SLA adding additional issues to her original evidentiary hearing request. The new issues alleged by Complainant were that: (1) The SLA had denied Complainant the opportunity to maximize her vocational potential; and, (2) as a result, Complainant could have realized a larger income with the appropriate training by the SLA to manage laundry equipment.

On February 6, 2009, a hearing officer denied Complainant's request for payment of legal fees, reimbursement for lost profits and her claim that the SLA had not maximized her vocational potential. Complainant appealed this decision. On December 4, 2009, the same hearing officer ruled that the SLA must establish a training assistance program to help Complainant maximize her vocational potential. On March 1, 2010, the SLA denied Complainant's claims as final agency action. Complainant then requested the Department to convene a Federal arbitration panel to appeal her grievance.

The Federal arbitration panel initially heard the following issues: (1) Whether Complainant's claim is barred under the doctrine of sovereign immunity as alleged by Respondent; and (2) whether Complainant's request for an evidentiary hearing is time-barred. The panel then determined that, if both of these issues were resolved in Complainant's favor, it must hear the following issues: (1) Whether the SLA allegedly failed to maximize Complainant's vocational potential in a timely manner; and (2) whether the SLA was responsible for the legal expenses of Complainant in the lawsuit brought against her by the third-party vendor. The panel then concluded that, if Complainant prevails on one or both of these claims, it must determine what remedy she should receive.

Arbitration Panel Decision

After hearing testimony and reviewing all of the evidence, the panel majority denied the SLA's claim of sovereign immunity. Specifically, the panel majority found that, under the Eleventh Amendment, a State is free to waive its sovereign immunity rights. However, under the Kentucky constitution, the power to waive sovereign immunity is vested in the State legislature. The Kentucky legislature enacted a statute that states in relevant part that, ''Any person, firm or corporation, having a lawfully authorized written contract with the Commonwealth at the time of or after June 21, 1974, may bring an action against the Commonwealth on the contract, including but not limited to actions either for breach of contracts or enforcement of contracts or for both.''

Accordingly, the panel majority ruled that both the SLA in negotiating the subcontract with the third-party contractor and Complainant receiving commissions from that contract constituted a contract agreement between the SLA and Complainant.

Regarding the timeliness of Complainant's request for an evidentiary hearing, the panel majority concluded that Complainant's deadline to request an evidentiary hearing expired no later than the date the SLA signed the subcontract with the third-party contractor in 2004. Therefore, Complainant's original request for an evidentiary hearing and her amended request were untimely.

Also, the panel majority concluded that the subcontract with the third-party contractor was initiated by the SLA, including making all of the arrangements with the third-party contractor, drafting the subcontract, and having Complainant sign the subcontract. As a result, the panel majority ruled that Complainant was not provided guidance from the SLA regarding the ramifications for entering into a subcontract, nor did the SLA assist Complainant when McCreary Prison dissolved the subcontract and the third-party contractor sued Complainant.

Accordingly, after consideration, the panel majority ruled that Complainant shall provide the SLA with evidence regarding the amount of legal expenses paid by her to be reimbursed by the SLA.

One panel member concurred with the panel majority's decision regarding the issues of sovereign immunity, 15-day time limit for Complainant to request an evidentiary hearing and maximization of vocational potential.

This panel member dissented from the panel majority's decision regarding Complainant's request for legal fees, stating that there was no evidence that Complainant pursued her rights diligently or that there were extraordinary circumstances that prevented a timely filing. The panel member also noted that, based on the evidence presented at the hearing, there did not appear to be official

documentation or proof on file of the amount of legal fees and expenses paid by Complainant.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

Electronic Access to This Document: The Official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 29, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–7994 Filed 4–2–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah, KY

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, April 26, 2012, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Administrative Issues
- Subcommittee Chairs' Comments
- Public Comments
- Final Comments
- Adjourn

Breaks Taken As Appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2011Meetings.html.*

Issued at Washington, DC, on March 27, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–7953 Filed 4–2–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST): Correction

AGENCY: Department of Energy.

ACTION: Notice of Open Teleconference: Correction.

SUMMARY: The Department of Energy (DOE) published in the **Federal Register** on March 28, 2012, a notice of an open conference call for the President's Council of Advisors on Science and Technology (PCAST). The notice is being corrected to change the time and to add an additional purpose.

Correction

In the **Federal Register** of March 28, 2012, in FR DOC. 2012–7433, on pages 18798–18799, please make the following corrections:

In the **SUMMARY** heading, page 18798, third column, first paragraph, twelfth line, after the word ''report'', please add the following language, ''and Advancing Innovation in Drug Development and Evaluation.''

In the **DATES** heading, page 18798, third column, first paragraph, third line, please remove, ''5 p.m.'' and add in its place ''5:30 p.m.,''

In the **SUPPLEMENTARY INFORMATION**, *Proposed Schedule and Agenda* heading, page 18799, first column, first paragraph, sixth line, please remove ''5 p.m.'' and in its place add ''5:30 p.m.''

Issued in Washington, DC, on March 28, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–7957 Filed 4–2–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board (STEAB)

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

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 19, 2012; 3:30 p.m.–4 p.m. (EST).

To receive the call-in number and passcode, please contact the Board's Designated Federal Officer (DFO) at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Gil Sperling, STEAB Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number is (202) 287–1644.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To provide advice and recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy (EERE) regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Conduct follow-up business from the March 13–15, 2012 meeting, update the Board on the activities of the STEAB's Task Forces since the March meeting, and provide an update to the Board on routine business matters and other topics of interest.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB web site at *www.steab.org.*

Issued at Washington, DC, on March 28, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–7956 Filed 4–2–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board (STEAB)

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces a live Board meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:
June 26, 2012: 9 a.m.–5 p.m.
June 27, 2012; 9 a.m.–5 p.m.
June 28, 2012: 9 a.m.–12 p.m.

ADDRESSES: The Mayflower Renaissance Hotel, 1127 Connecticut Ave. NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Gil Sperling, STEAB Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington DC, 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To provide advice and recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy (EERE) regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Receive in person updates and reviews of accomplishment of STEAB's Subcommittee and Task Forces, meet with officials of DOE and the Office of EERE to discuss new initiatives and technologies, and explore possible technology transfer programs, meet with EERE Program Managers to gain a better understanding of deployment efforts and ongoing initiatives, and update to the Board on routine business matters and other topics of interest.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, *www.steab.org.*

Issued at Washington, DC, on March 28, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–7955 Filed 4–2–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–88–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on March 19, 2012, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed an application in Docket No. CP12–88–000 pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon in place, an unutilized supply lateral pipeline and related appurtenances located in the East Cameron Area in Federal offshore waters in the Gulf of Mexico offshore Louisiana.

Texas Eastern proposes to abandon its 13.15-mile, 30-inch diameter Line 41–A–7 extending from East Cameron Block 281 to a platform in East Cameron Block 245, and appurtenant facilities including valves and pig launchers. Texas Eastern states that the supply lateral has been inactive for over one year, since February 8, 2011. An order approving abandonment is requested by May 1, 2012.

Any questions concerning this application may be directed to Lisa A. Connolly, General Manager, Rates & Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, or Phone: 713–627–4102, or Fax: 713–627–5947, or Email: *laconnolly@spectraenergy.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888

First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit an original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 11, 2012.

Dated: March 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–7910 Filed 4–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–60–004.
Applicants: Progress Energy, Inc., Duke Energy Corporation.
Description: Revised Compliance Filing of Duke Energy Corporation and Progress Energy, Inc.
Filed Date: 3/26/12.
Accession Number: 20120326–5057.
Comments Due: 5 p.m. ET 4/25/12.

Docket Numbers: EC12–86–000.
Applicants: PacifiCorp.
Description: Application of PacifiCorp for Authorization of Transaction Under Section 203 of the Federal power Act and Request of Waivers and Expedited Consideration.
Filed Date: 3/26/12.
Accession Number: 20120326–5144.
Comments Due: 5 p.m. ET 4/16/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–47–000.
Applicants: Wellhead Power Delano, LLC.
Description: Self-Certification of Exempt Wholesale Generator Status of Wellhead Power Delano, LLC.
Filed Date: 3/23/12.
Accession Number: 20120323–5183.
Comments Due: 5 p.m. ET 4/13/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2154–002; *ER10–2298–003.*
Applicants: Twin Eagle Resource Management, LLC, Enserco Energy LLC.
Description: Change in Status Filing of Twin Eagle Resource Management, LLC, et al.
Filed Date: 3/26/12.
Accession Number: 20120326–5132.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER11–4336–005.
Applicants: ISO New England Inc.
Description: Order 745 Aggregation Compliance Filing to be effective 6/1/2012.
Filed Date: 3/26/12.
Accession Number: 20120326–5053.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–398–000.
Applicants: Southwestern Electric Power Company.
Description: Southwestern Electric Power Company submits tariff filing per: 20120323 Bentonville Sub Refund Report to be effective N/A.
Filed Date: 3/23/12.
Accession Number: 20120323–5184.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–991–001.
Applicants: ISO New England Inc.
Description: Amendment to Filing of Revisions to Attachment K and Market Rule 1 to be effective 5/26/2012.
Filed Date: 3/26/12.
Accession Number: 20120326–5084.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1113–002.
Applicants: Midwest Independent Transmission System Operator, Inc., International Transmission Company.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): ITC–DTE River Rouge Second Amendment to be effective 4/17/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5163.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1335–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position O50; Original Service Agreement No. 3271 to be effective 2/22/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5186.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1336–000.
Applicants: AEP Texas North Company.
Description: AEP Texas North Company submits tariff filing per 35.13(a)(2)(iii: 20120323 Kaiser Creek SUA Cancellation to be effective 1/10/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5187.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1337–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.15: Notice of Cancellation of LtrAgmt SCE–GBU for 1901 CA St Redlands Roof Top Solar to be effective 1/31/2012.
Filed Date: 3/26/12.
Accession Number: 20120326–5001.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1338–000.
Applicants: Duke Energy Carolinas, LLC, Carolina Power & Light Company.
Description: JDA Filing 2012 to be effective 12/31/9998.
Filed Date: 3/26/12.
Accession Number: 20120326–5022.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1339–000.
Applicants: Carolina Power & Light Company.

Description: Rate Schedule No. 192 of Carolina Power and Light Company to be effective 12/31/9998.
Filed Date: 3/26/12.
Accession Number: 20120326–5023.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1340–000.
Applicants: Carolina Power & Light Company.
Description: Rate Schedule No. 193 of Carolina Power and Light Company to be effective 12/31/9998.
Filed Date: 3/26/12.
Accession Number: 20120326–5024.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1341–000.
Applicants: Carolina Power & Light Company.
Description: Rate Schedule No. 194 of Carolina Power and Light Company to be effective 12/31/9998.
Filed Date: 3/26/12.
Accession Number: 20120326–5025.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1342–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii: PSA Filing to be effective 12/31/9998.
Filed Date: 3/26/12.
Accession Number: 20120326–5028.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1343–000.
Applicants: Duke Energy Carolinas, LLC, Florida Power Corporation, Carolina Power & Light Company.
Description: Merger-Related Filing of Joint OATT to be effective 12/31/9998.
Filed Date: 3/26/12.
Accession Number: 20120326–5034.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1344–000.
Applicants: Public Service Company of New Mexico.
Description: Baseline filing of PNM–LAC NITSA SA–195 to be effective 3/23/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5203.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1345–000.
Applicants: Florida Power Corporation.
Description: Certificate of Concurrence of Florida Power Corporation with Joint OATT to be effective 12/31/9998.
Filed Date: 3/26/12.
Accession Number: 20120326–5038.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1346–000.
Applicants: Carolina Power & Light Company.
Description: Certificate of Concurrence of Carolina Power and Light Company with Joint OATT to be effective 12/31/9998.
Filed Date: 3/26/12.
Accession Number: 20120326–5040.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1347–000.
Applicants: Carolina Power & Light Company.
Description: Rate Schedule No. 190 of Carolina Power and Light Company to be effective 12/31/9998.
Filed Date: 3/26/12.
Accession Number: 20120326–5041.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1348–000.
Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.
Description: 20120326—InterchangeAgreement to be effective 1/1/2012.
Filed Date: 3/26/12.
Accession Number: 20120326–5077.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1349–000.
Applicants: Burney Forest Products, A Joint Venture.
Description: Burney Forest Products, A Joint Venture submits Notice of Cancellation of Power Sale Agreement, Rate Schedule No. 1.
Filed Date: 03/23/2012.
Accession Number: 20120323–5168.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1350–000.
Applicants: Southern California Edison Company.
Description: SCE Cancels Added Facilities Agreement & DSA with Green Power Partners (WDT035).
Filed Date: 3/26/12.
Accession Number: 20120326–5094.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1351–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Clean Up filing to Combine Accepted Revisions in ER11–4106, ER11–3384 & ER12–636 to be effective 4/1/2012.
Filed Date: 3/26/12.
Accession Number: 20120326–5131.
Comments Due: 5 p.m. ET 4/16/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–28–000.
Applicants: NSTAR Electric Company.
Description: Application of NSTAR Electric Company for Authority to Issue Short-Term Debt Securities.
Filed Date: 3/26/12.
Accession Number: 20120326–5143.
Comments Due: 5 p.m. ET 4/16/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 26, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–7883 Filed 3–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–46–000.
Applicants: Silver State Solar Power North, LLC.
Description: Notice of Self-Certification as an EWG of Silver State Solar Power North, LLC.
Filed Date: 3/22/12.
Accession Number: 20120322–5064.
Comments Due: 5 p.m. ET 4/12/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2984–005.
Applicants: Merrill Lynch Commodities, Inc.
Description: MBR Compliance Filing to be effective 3/22/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5062.
Comments Due: 5 p.m. ET 4/12/12.

Docket Numbers: ER12–684–001.
Applicants: ITC Midwest LLC.
Description: Filing of a Deficiency Response to be effective 2/22/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5078.
Comments Due: 5 p.m. ET 4/12/01.

Docket Numbers: ER12–1317–000.

Applicants: Entergy Arkansas, Inc., Entergy Services, Inc.
Description: PLUM DTOAs to be effective 3/22/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5067.
Comments Due: 5 p.m. ET 4/12/12.

Docket Numbers: ER12–1318–000.
Applicants: First Point Power, LLC.
Description: FPP MBR Filing to be effective 3/25/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5069.
Comments Due: 5 p.m. ET 4/12/12.

Docket Numbers: ER12–1319–000.
Applicants: Arizona Public Service Company.
Description: Cancellation of Arizona Public Service Company Service Agreement No. 313 to be effective 5/22/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5090.
Comments Due: 5 p.m. ET 4/12/12.

Docket Numbers: ER12–1320–000.
Applicants: Desert View Power, Inc.
Description: Market-Based Rate Application and Request for Waivers and Blanket Authorization to be effective 5/1/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5104.
Comments Due: 5 p.m. ET 4/12/12.

Docket Numbers: ER12–1321–000.
Applicants: Cleco Power LLC.
Description: Baseline filings of SA90, 113, 115 & 119 to be effective 3/22/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5108.
Comments Due: 5 p.m. ET 4/12/12.

Docket Numbers: ER12–1322–000.
Applicants: New York Independent System Operator, Inc.
Description: Request for Limited Tariff Waiver and Request for Expedited Action of the New York Independent System Operator, Inc.
Filed Date: 3/22/12.
Accession Number: 20120322–5124.
Comments Due: 5 p.m. ET 3/29/12.

Docket Numbers: ER12–1323–000.
Applicants: Wabash Valley Power Association, Inc.
Description: WVPA Market-Based Tariff Revised to be effective 5/21/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5036.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1324–000.
Applicants: Wabash Valley Energy Marketing, Inc.
Description: Wabash Valley Energy Marketing Market-Based Tariff Revised to be effective 5/21/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5041.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1325–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Revisions to FCM Rules Related to Net Regional Clearing Price to be effective 6/1/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5076.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1326–000.
Applicants: Northern States Power Company, a Minnesota Corporation.
Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.13(a)(2)(iii): 2012–3–23_GRE–Multi-Pty–JPZ Agrmt_304–NSP to be effective 8/18/2010.
Filed Date: 3/23/12.
Accession Number: 20120323–5077.
Comments Due: 5 p.m. ET 4/13/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–302–000.
Applicants: Pennsylvania State Employee Credit Union.
Description: Pennsylvania State Employee Credit Union submits FERC Form 556 Notice of Certification of Qualifying Facility (QF) Status for a Small Power Production Facility.
Filed Date: 3/20/12.
Accession Number: 20120320–5170.
Comment Date: None Applicable.

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: March 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–7887 Filed 4–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2664–001.
Applicants: Powerex Corp.
Description: Powerex Corp. submits tariff filing per 35: Rate Schedule No. 1 Compliance Filing to be effective 3/1/2012 under ER11–2664.
Filed Date: 3/23/12.
Accession Number: 20120323–5133.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1095–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): Errata incorporating TOA Sec 4.8.4 re Direct Billing to Late Outages—ER12–1095 to be effective 4/16/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5098.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1265–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 03–23–2012 Order 719 Compliance Amendment to be effective 6/12/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5147.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1266–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 03–23–2012 Order 745 Amendment to be effective 6/12/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5146.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1327–000.
Applicants: PJM Interconnection, L.L.C., Metropolitan Edison Company.
Description: FirstEnergy submits GenOn-MetEd Memorandum of Understanding, PJM SA No. 3273 to be effective 3/13/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5086.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1329–000.
Applicants: Wildcat Wind Farm I, LLC.
Description: Wildcat Wind Farm I, LLC submits tariff filing per 35.12: Market-Based Rate Application to be effective 3/23/2012.

Filed Date: 3/23/12.
Accession Number: 20120323–5092.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1330–000.
Applicants: PJM Interconnection, L.L.C., Commonwealth Edison Company.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): ComEd submits revisions to PJM Tariff Attachment M–2 (ComEd) to be effective 5/29/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5103.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1331–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): SGIA WDAT SERV AG SCE–SEPV 9 LLC SEPV 9 Project to be effective 3/23/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5106.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1332–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii): 2012–3–23_CWnd1–E&P–653 0.0.0 Agmt to be effective 3/24/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5129.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1333–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Highland Wind Resource Termination.
Filed Date: 3/23/12.
Accession Number: 20120323–5142.
Comments Due: 5 p.m. ET 4/13/12.

Docket Numbers: ER12–1334–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Ansonia Resource Termination.
Filed Date: 3/23/12.
Accession Number: 20120323–5143.
Comments Due: 5 p.m. ET 4/13/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–26–000.
Applicants: Ameren Services Company, Union Electric Company.
Description: Supplemental information of Ameren Missouri.
Filed Date: 3/23/12.
Accession Number: 20120323–5035.
Comments Due: 5 p.m. ET 4/2/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–7888 Filed 4–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–50–000]

FirstEnergy Solutions Corp., Allegheny Energy Supply Company, LLC v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on March 26, 2012, pursuant to sections 206 and 306 of the Federal Power Act, and Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206 and 206(h), FirstEnergy Solutions Corp. (FirstEnergy Solutions) and Allegheny Energy Supply Company, LLC (AE Supply, collectively First Energy Companies) (Complainants) filed a formal complaint against PJM Interconnection, L.L.C. (PJM) (Respondent) alleging that provisions of PJM's Open Access Transmission Tariff and Operating Agreement as related to the rules governing the Auction Revenue Rights allocation process are unjust and unreasonable.

The FirstEnergy Companies certify that copies of the complaint were served on the contacts for PJM as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 16, 2012.

Dated: March 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–7911 Filed 4–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14369–000]

Nuvista Light and Electric Cooperative, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 2, 2012, Nuvista Light and Electric Cooperative, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Chikuminuk Lake Hydroelectric Project (Chikuminuk Project or project) to be located on the Allen River, 118 miles southeast of Bethel, Alaska, in the unincorporated Bethel and Dillingham Census Area, Alaska. The project would be partially located on federal lands managed by the U.S. Fish and Wildlife Service in the Yukon Delta National Wildlife Refuge. The sole purpose of a preliminary

permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An approximately 1,325-foot-long, 128-foot-high concrete-faced rockfill dam; (2) a 25-foot-diameter intake structure; (3) a 775-foot-long, 25-foot-diameter tunnel bringing flows from the intake to a gate house; (4) a gate house and gate shaft to convey flows from the tunnel to the main penstock; (5) a 120-foot-long, 9- to 13-foot-diameter main penstock, which bifercates into a 135-foot-long, 9-foot-diameter penstock leading to turbine 1 and a 115-foot-long, 9-foot-diameter penstock leading to turbine 2; (6) a 150-foot-long, 75-foot-wide powerhouse containing two vertical Francis turbine/generator units rated for 6.7 megawatts (MW) each, for a total installed capacity of 13.4 MW; (7) a 100-foot-long, 75-foot-wide tailrace returning project flows to the Allen River; (8) a 118-mile long, 138-kilovolt transmission line leading from the powerhouse to a substation in the town of Bethel; (9) project access facilities, including a float plane dock and a heliport; (10) project roads leading from the float plane dock to the dam and powerhouse; and (11) appurtenant facilities. The estimated annual generation of the Chikuminuk Project would be 88.7 gigawatt-hours.

Applicant Contact: Ms. Elaine Brown, Executive Director, Nuvista Light and Electric Cooperative, Inc., 301 Calista Court, Suite A, Anchorage, Alaska 99518; phone: (907) 868–2460.

FERC Contact: Jennifer Harper; phone: (202) 502–6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14369) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–7909 Filed 4–2–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9655–2]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA's Responsiveness Summary Concerning EPA's November 30, 2011, Public Notice of Proposed Decisions to Add Waters and Pollutants to Louisiana's 2010 Section 303(d) List.

On November 30, 2011, the U.S. Environmental Protection Agency (EPA) published a notice in the **Federal Register** at Volume 76, Number 230, pages 74057–74058 providing the public the opportunity to review its decision to partially approve and proposal to partially disapprove Louisiana's 2010 Section 303(d) List. Specifically, EPA approved Louisiana's listing of 410 waterbody pollutant combinations, and associated priority rankings. EPA proposed to disapprove Louisiana's decisions not to list three waterbodies. These three waterbodies were added by EPA because the applicable numeric water quality standards marine criterion for dissolved oxygen was not attained in these segments.

Based on the Responsiveness Summary, EPA finds no new information or persuasive arguments as to why the three waters should not be added to the 2010 Louisiana Section 303(d) List as proposed. Therefore, EPA is taking Final Action on the addition of three waterbody pollutant combinations to the final Louisiana 2010 Section 303(d) List. The basis for these decisions is described in EPA's Responsiveness Summary and the Record of Decision.

ADDRESSES: Copies of EPA's Responsiveness Summary Concerning EPA's March 20, 2012 Public Notice of Final Decisions to Add Waters and Pollutants to Louisiana's 2010 Section 303(d) List can be obtained at EPA Region 6's Web site at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm#303dlists,* or by writing or calling Ms. Diane Smith at Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–2145, facsimile (214) 665–6490, or email: *smith.diane@epa.gov.* Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, Louisiana submitted to EPA its 2010 listing decisions under Section 303(d) on January 13, 2011. On November 30, 2011, EPA approved Louisiana's 2010 listing of 410 water body-pollutant combinations and associated priority rankings, and proposed to disapprove Louisiana's decisions not to list three waterbodies. On March 20, 2012, EPA finalized the action to disapprove Louisiana's 2010 listing decisions not to list three water quality limited segments. EPA identified these additional waters and pollutants along

with priority rankings for inclusion on the 2010 Section 303(d) List.

Dated: March 20, 2012.

William K. Honker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 2012–7952 Filed 4–2–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 4, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0817.

Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3 respondents; 6 responses.

Estimated Time per Response: 2–50 hours.

Frequency of Response: On occasion and semi-annual reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is in 47 U.S.C. sections 151, 152, 154, 161, 201–205, 208, 251, 260 and 271–276.

Total Annual Burden: 162 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. However, applicants may request confidentiality and request confidential treatment of their information they believe is confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking OMB approval for an extension of this expiring information collection in order to obtain the full three year approval from them. There are no changes in the reporting requirements. The Commission has adjusted the total burden hours from 216 to 162 hours because there are only three Bell Operating Companies (BOCs) instead of four—which was reported in 2009.

Bell Operating Companies (BOCs) are required to post their Comparably Efficient Interconnection (CEI) plans and amendments on their publicly accessible Internet sites. The requirement extends to all CEO plans for intraLATA information services, telemessaging, or alarm monitoring services, and for new or amended payphone services. If the BOC receives a good faith request for a plan from someone who does not have Internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection.

The CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetitive behavior by the BOCs in the provision of information services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–7857 Filed 4–2–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 27, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Gus J. Lukas and Lorraine J. Lukas 2006 Trust for Lori J. Foy (''Trust''), and Lori J. Foy, Grafton, Wisconsin, individually and as trustee of Trust, and Lori J. Foy, together as a group acting in concert with Trust, Lori J. Foy as trustee, Paul Foy, Grafton, Wisconsin, John Lukas, and Mark Lukas, both of Manitowoc, Wisconsin, and the Foy minor children,* to retain control of Community Bancshares of Wisconsin, Inc., and thereby indirectly retain control of Cornerstone Community Bank, both in Grafton, Wisconsin.

Board of Governors of the Federal Reserve System, March 29, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–7958 Filed 4–2–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Platinum Bank Holding Company,* Brandon, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Platinum Bank, Brandon, Florida.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Ipswich Community Bancshares, Inc.,* Ipswich, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Yellowstone Trail Bancorporation, and thereby acquire Ipswich State Bank, both in Ipswich, South Dakota.

Board of Governors of the Federal Reserve System, March 29, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–7959 Filed 4–2–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974; System of Records; Correction

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice of Systems of Records; correction.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) published a document in the April 14, 1987, **Federal Register**, 52 FR 12065, pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, as amended, in order to describe its new system of records. This system of records included FRTIB–1. On May 7, 1990, the Agency published a notice making the system of records final. 55 FR 18949. The 1990 publication of FRTIB–1 purported to account for each routine use and to provide justification for each deleted routine use. However, subpart ''r'' was deleted without justification. Internal Agency documents show that routine use ''r'' was omitted from the 1990 publication as a result of scrivener's error. Therefore, since this omission was unintentional, routine use ''r'' has been in effect since the 1987 publication. In order to reform the system of records to the Agency's intent, this notice restores routine use ''r'' to the 1990 notice and to each subsequent version (FR Doc. 90–10373, FR Doc. 94–12321, FR Doc. 99–23830, FR Doc. E9–887) of FRTIB–1. This deletion was a technical error, and is hereby corrected.

FOR FURTHER INFORMATION CONTACT: Erin F. Graham, (202) 942–1605.

Correction

In the **Federal Register** of January 16, 2009, in FR Doc. E9–887, on page 3043, restore routine use ''r'' and redesignate it as paragraph ''v'' to read as follows:

v. To disclose to an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies in support of the function for which the records were collected and maintained.

Dated: March 29, 2012.

Thomas K. Emswiler,

General Counsel.

[FR Doc. 2012–7978 Filed 4–2–12; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–275; Regulations.gov Docket: ATSDR–2012–0001]

Substances To Be Evaluated for Set 26 Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Request for comments on the proposed substances to be evaluated for Set 26 toxicological profiles.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Agency for Toxic Substances and Disease Registry (ATSDR), located within the Department of Health and Human Services (HHS), to prepare and to periodically revise toxicological profiles on hazardous substances. ATSDR is initiating the development of its 26th set of toxicological profiles (CERCLA Set 26). This notice announces the list of substances that will be evaluated for CERCLA Set 26 toxicological profile development. ATSDR's Division of Toxicology and Human Health Sciences (proposed) is soliciting public nominations from the list of substances to be evaluated for toxicological profile development. ATSDR also will consider the nomination of any additional substances that are not included on this list that may have public health implications, on the basis of ATSDR's authority to prepare toxicological profiles for substances not found at sites on the National Priorities List. The agency will do so in order to ''* * * establish and maintain inventory of literature, research, and studies on the health effects of toxic substances'' under CERCLA Section 104(i)(1)(B), to respond to requests for consultation under section 104(i)(4), and to support the site-specific response actions conducted by ATSDR, as otherwise necessary.

DATES: Nominations from the substance priority list and/or additional

substances must be submitted within 30 days of the publication of this notice.

ADDRESSES: You may submit nominations, identified by Docket No. ATSDR–2012–0001, by any of the following methods:

- *Internet:* Access the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Toxicology and Human Health Sciences (proposed), 1600 Clifton Rd. NE., MS F–62, Atlanta, Georgia 30333.

Instructions: All submissions must include the agency name and docket number for this notice. All relevant comments will be posted without change. This means that no confidential business information or other confidential information should be submitted in response to this notice. Refer to the section *Submission of Nominations* (below) for the specific information required.

FOR FURTHER INFORMATION CONTACT: For further information, please contact CDR Jessilynn Taylor, Division of Toxicology and Human Health Sciences (proposed), 1600 Clifton Rd. NE., MS F–62, Atlanta, Georgia 30333, Email: *tpcandidatecomments@cdc.gov;* phone: 1–800–232–4636.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the Priority List of Hazardous Substances (also called the Substance Priority List). This list identifies 275 hazardous substances that ATSDR (in cooperation with EPA) have determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on November 3rd, 2011 (76 FR 68193). For prior versions of the list of substances, see **Federal Register** notices dated December 7, 2005 (70 FR 70284); and March 6, 2008 (73 FR 12178).

Substances To Be Evaluated for Set 26 Toxicological Profiles

Each year, ATSDR develops a list of substances to be considered for toxicological profile development. The Set 26 nomination process includes consideration of all substances on the ATSDR's Substance Priority List (SPL) as well as other substances nominated by the public. The 275 substances on the list will be considered for Set 26 Toxicological Profile development. This list may be found at the following Web site: *www.atsdr.cdc.gov/SPL*, and in the docket at *www.regulations.gov.*

Submission of Nominations for the evaluation of Set 26 Substances: Today's notice invites voluntary public nominations for substances included on the SPL and for substances not listed on the SPL. All nominations should include full name of the nominator, affiliation, and email address. When nominating a non-SPL substance, please include the rationale for the nomination. Please note, email addresses will not be posted on regulations.gov.

ATSDR will evaluate all data and information associated with nominated substances and will determine the final list of substances to be chosen for toxicological profile development. Substances will be chosen according to ATSDR's specific guidelines for selection. These guidelines can be found in the Selection Criteria announced in the **Federal Register** on May 7, 1993 (*58FR27286–27287*). A hard copy of the Selection Criteria is available upon request or may be accessed at: *http://www.atsdr.cdc.gov/toxprofiles/guidance/criteria_for_selecting_tp_support.pdf.*

Please ensure that your comments are submitted within the specified nomination period. Nominations received after the closing date will be marked as late and may be considered only if time and resources permit.

Dated: March 28, 2012.

Ken Rose,

Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 2012–7975 Filed 4–2–12; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10418]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Title of Information Collection:* Annual MLR and Rebate Calculation Report; *Type of Collection:* New collection; *Use:* Under Section 2718 of the Affordable Care Act and implementing regulation at 45 CFR Part 158 (75 FR 74865, December 1, 2010) as modified by technical corrections on December 30, 2010 (75 FR 82277), a health insurance issuer (issuer) offering group or individual health insurance coverage must submit a report to the Secretary concerning the amount the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes and licensing and regulatory fees, and the amount of earned premium. An issuer must provide an annual rebate to enrollees if the amount it spends on certain costs compared to its premium revenue (excluding Federal and State taxes and licensing and regulatory fees) does not meet a certain ratio, referred to as the medical loss ratio (MLR). An interim final rule (IFR) implementing the MLR was published on December 1, 2010 (75 FR 74865) and modified by technical corrections on December 30, 2010 (75 FR 82277), which added Part 158 to Title 45 of the Code of Federal Regulations. The IFR is effective January

1, 2011. A final rule regarding selected provisions of the IFR was published on December 7, 2011 (76 FR 76574, CMS–9998–FC) and an interim final rule regarding an issue not included in issuers' reporting obligations (disbursement of rebates by non-federal governmental plans) was also published December 7, 2011 (76 FR 76596, CMS–9998–IFC2). Both rules published on December 7, 2011 are effective January 1, 2012. Each issuer is required to submit annually MLR data, including information about any rebates it must provide, on a form prescribed by CMS, for each State in which the issuer conducts business. Each issuer is also required to provide a rebate notice to each enrollee that is due a rebate payment for any given MLR reporting year. Additionally, each issuer is required to maintain for a period of seven years all documents, records and other evidence that support the data included in each issuer's annual report to the Secretary.

The original 60-day comment period began on December 16, 2011 and pertained to the MLR Annual Reporting Form, and closed on February 14, 2012. On February 16, we published an amended PRA package with Notices to Consumers and reopened the public comment period until March 2, 2012 to accommodate comments on the amendments to the PRA package. We received a total of 15 public comments regarding the Annual Reporting Form and 11 public comments regarding the Notices to Consumers and Instructions for these notices. Most public comments addressed multiple issues. We have taken into consideration all the proposed suggestions and have made changes to the Annual Reporting Form and Instructions, as well as to the Notices to Consumers and Instructions. In addition, CMS is adjusting the estimated burden that correlates with the Rebate Notices and the MLR Information Notices.

Form Number: CMS–10418 (OCN: 0938–New); *Frequency:* Annual submission for each respondent; *Affected Public:* Private Sector: Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 527; *Number of Responses:* 5,530; *Total Annual Hours:* 352,563. (For policy questions regarding this collection, contact Carol Jimenez at (301) 492–4457. For all other issues, call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *May 3, 2012.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov*.

Dated: March 30, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–8080 Filed 4–2–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Study of Coordination of Tribal TANF and Child Welfare Services.

OMB No.: New Collection.

Description: The Study of Coordination of Tribal TANF and Child Welfare Services is sponsored by the Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families of the U.S. Department of Health and Human Services. The study examines the approaches and strategies utilized by tribes and tribal organizations that were awarded the grants for Coordination of Tribal TANF and Child Welfare Services to Tribal Families at Risk of Child Abuse or Neglect.

The descriptive study of these programs that serve tribal communities will document the way in which the tribal grantees are creating and adapting culturally relevant and appropriate approaches, systems, and programs to increase coordination and enhance service delivery to address child abuse and neglect. The study will also document challenges faced and lessons learned to inform the field of practice as well as policymakers and funders at various levels.

The proposed information collection activities consist of semi-structured interviews, conducted at each of the 14 tribal communities, and a grantee feedback survey on the usefulness of periodically held cross-grantee learning events.

Respondents: Program director(s), tribal TANF and child welfare staff and supervisors, program partners, and tribal leaders or elders. The information collection does not include direct interaction with individuals or families that receive the services.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Interview Protocol for Program Staff	9	3	1.5	41
Interview Protocol for TANF and CW Staff	19	3	1	57
Interview Protocol for Tribal or Community Partners	9	3	.75	20
Interview Protocol for Tribal Leaders or Elders	9	3	1	27
Feedback Form for Community of Learning Events	10	5	.15	8

Estimated Total Annual Burden Hours: 153.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and

Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–7923 Filed 4–2–12; 8:45 am]

BILLING CODE 4184–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0508]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Blood Establishment Registration and Product Listing, Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Blood Establishment Registration and Product Listing, Form FDA 2830'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *ila.mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On January 4, 2012, the Agency submitted a proposed collection of information entitled ''Blood Establishment Registration and Product Listing, Form FDA 2830'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0052. The approval expires on March 31, 2015. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: March 28, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–7915 Filed 4–2–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0300]

Draft Guidance for Industry on Compliance Policy for Reporting Drug Sample Distribution Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Compliance Policy on Reporting Drug Sample Distribution Information Under the Affordable Care Act.'' This draft guidance is intended to provide information regarding the Agency's implementation of the drug sample transparency reporting provisions of section 6004 of the Patient Protection and Affordable Care Act. The draft guidance notifies entities covered by the reporting obligations in section 6004 that FDA does not intend to object until at least October 1, 2012, if manufacturers and authorized distributors of record (ADRs) do not submit information under those reporting provisions and that the Agency intends to provide notice before revising its exercise of discretion with respect to compliance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance by June 4, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Donovan F. Duggan, Jr., Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4288, Silver Spring, MD 20993–0002, 301–796–0584; Paul Loebach, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4268, Silver Spring, MD 20993–0002, 301–796–2173; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Compliance Policy on Reporting Drug Sample Distribution Information.'' On March 23, 2010, the Affordable Care Act was signed into law. Among its many provisions, section 6004 of the Affordable Care Act amended the Social Security Act by adding section 1128H (42 U.S.C. 1320a–7i). This new section requires the submission of certain drug sample information to FDA not later than April 1 of each year, beginning April 1, 2012.

The draft guidance is intended to provide information regarding the Agency's implementation of section

6004. The draft guidance notifies entities covered by section 6004 that FDA does not intend to object until at least October 1, 2012, if manufacturers and ADRs do not submit information under section 6004 and that we intend to provide notice before revising our exercise of discretion with respect to compliance. The draft guidance also notifies covered entities that FDA plans to use its Electronic Submission Gateway (the Gateway) for submissions under section 6004 and that revisions to allow the Gateway to receive such submissions should be complete by April 1, 2012. Should covered entities wish to make such submissions notwithstanding FDA's compliance policy, the draft guidance provides information about accessing the Gateway. The Agency expects to issue further draft guidance concerning the requirements of section 6004 later in 2012.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This draft guidance regarding Agency compliance policy refers to information collections under section 6004 that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). As noted, the Agency is also preparing a draft guidance for release later this year to provide additional information regarding submissions under section 6004. In accordance with the PRA, prior to publication of a final guidance document, FDA intends to solicit public comment and obtain OMB approval for any new information collections under section 6004.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: March 28, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–7912 Filed 3–29–12; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0071]

Draft Guidance for Industry: Modified Risk Tobacco Product Applications; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Modified Risk Tobacco Product Applications.'' The draft guidance provides information about submitting applications for modified risk tobacco products under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). The draft guidance describes the information that the FD&C Act requires you to submit in your modified risk tobacco product application and the scientific evidence FDA recommends you submit to support your application. The draft guidance also permits the filing of a single application for any modified risk tobacco product that is also a new tobacco product under the FD&C Act.

DATES: Although you can submit written or electronic comments on this guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance by June 4, 2012. Submit electronic or written comments on the proposed collection of information by June 4, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Modified Risk Tobacco Product Applications'' to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance, including comments on the proposed collection of information, to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: *With regard to the draft guidance:* Gail Schmerfeld or Kristin Davis, Center for Tobacco Products, 9200 Corporate Blvd., Rockville, MD 20850–3229, 1–877–287–1373, *gail.schmerfeld@fda.hhs.gov* or *kristin.davis@fda.hhs.gov.*

With regard to the proposed collection of information: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (Tobacco Control Act) into law. The Tobacco Control Act grants FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health generally and to reduce tobacco use by minors. Congress found that it is essential that, prior to marketing tobacco products for use to reduce harm or the risk of tobacco-related disease or to reduce exposure to harmful substances associated with tobacco products, manufacturers be required to ''demonstrate that such products * * * meet a series of rigorous criteria, and will benefit the health of the population as a whole'' (section 2(36) of the Tobacco Control Act). Thus, section 101 of the Tobacco Control Act added section 911 (21 U.S.C. 387k) to the FD&C Act to prohibit the introduction or delivery for introduction into interstate commerce of any modified risk tobacco product unless an order

issued by FDA pursuant to section 911(g) of the FD&C Act is effective with respect to such product. A modified risk tobacco product is any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products (section 911(b)(1) of the FD&C Act).

Section 911(l)(1) of the FD&C Act directs FDA to issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. FDA is issuing this draft guidance in compliance with section 911(l)(1). When finalized, the draft guidance will provide industry with information on who submits modified risk tobacco product applications (MRTPAs), when to submit a MRTPA, what information section 911 of the FD&C Act requires applicants to submit in a MRTPA, what scientific evidence FDA recommends applicants include in a MRTPA, what information should be collected through postmarket surveillance and studies, how to organize and submit the MRTPA, and FDA's timeframe for review of a MRTPA. It will also provide for the filing of a single application for any modified risk tobacco product that is also a new tobacco product.

Section 911(l)(2) of the FD&C Act directs FDA to consult with the Institute of Medicine (IOM), and get the input of other appropriate scientific and medical experts, on the design and conduct of studies required for the assessment and ongoing review of modified risk tobacco products. FDA gave IOM its charge on February 2, 2011. IOM published its report on December 14, 2011. The report is available through *http://www.iom.edu/Reports/2011/Scientific-Standards-for-Studies-on-Modified-Risk-Tobacco-Products.aspx* and will be placed in the docket for this draft guidance. In order to get input from other experts, FDA held a public workshop on August 25 and 26, 2011, and established a docket, FDA–2011–N–0443, to receive public comments. FDA intends to consider the IOM report and comments submitted to the public workshop docket in preparing the final guidance.

II. Significance of Guidance

FDA is issuing this draft guidance document consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on ''Modified Risk Tobacco Product Applications.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Draft Guidance for Industry: Modified Risk Tobacco Product Applications (OMB Control Number 0910–NEW)

This draft guidance describes the information that the FD&C Act requires you to submit in your MRTPA as well as FDA's recommendations regarding the scientific evidence that should be contained in a MRTPA for FDA to make an assessment and conduct an ongoing review of modified risk tobacco products. The draft guidance also permits the filing of a single application for any modified risk tobacco product that is also a new tobacco product under section 910 of the FD&C Act. The draft guidance document discusses, among other things: Who submits MRTPAs, when to submit a MRTPA, what information section 911 of the FD&C Act requires applicants to submit in a MRTPA, what scientific evidence FDA recommends applicants include in a MRTPA, what information should be collected through postmarket surveillance and studies, and how to organize and submit a MRTPA. The purpose of the proposed information collection is to allow FDA to collect statutorily mandated information regarding modified risk tobacco products and other information that will facilitate FDA's effective and efficient review of MRTPAs.

Modified risk tobacco products are tobacco products that are sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products (section 911(b)(1) of the FD&C Act). No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless an order issued pursuant to section 911(g) of the FD&C Act is effective with respect to that product (section 911(a) of the FD&C Act).

Under section 911(d) of the FD&C Act, a MRTPA must contain:

- A description of the proposed product and any proposed advertising and labeling;
- The conditions for using the product;
- The formulation of the product;
- Sample product labels and labeling;
- All documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;
- Data and information on how consumers actually use the tobacco product; and
- Such other information as the Secretary may require.

Further, FDA's regulation implementing the National Environmental Policy Act of 1969 requires that ''[a]ll applications or petitions requesting agency action require the submission of an [environmental assessment] or a claim of categorical exclusion'' (21 CFR 25.15(a)).

Section 911(g) of the FD&C Act describes the demonstrations applicants must make to obtain an order from FDA. Sections 911(g)(1) and (2) of the FD&C Act set forth two bases for FDA to issue an order.

A ''risk modification order'' is an order permitting the introduction or delivery for introduction into interstate commerce of a tobacco product that FDA has found meets the criteria for an order under section 911(g)(1) of the FD&C Act. In order for FDA to issue a risk modification order under section 911(g)(1) of the FD&C Act, the applicant must demonstrate that the proposed modified risk tobacco product, as it is actually used by consumers, will:

- Significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and
- Benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

An ''exposure modification order'' is an order permitting the introduction or delivery for introduction into interstate commerce of a tobacco product that reduces or eliminates exposure to a substance and for which the available scientific evidence suggests that a measurable and substantial reduction in morbidity and mortality is likely to be demonstrated in future studies. In order for FDA to issue an exposure modification order, the applicant must satisfy all of the criteria for issuance of an order under section 911(g)(2) of the FD&C Act.

FDA may issue an exposure modification order under section 911(g)(2) of the FD&C Act (the ''special rule'') if it determines that the applicant has demonstrated that:

- Such an order would be appropriate to promote the public health;
- Any aspect of the label, labeling, and advertising for the product that would cause the product to be a modified risk tobacco product is limited to an explicit or implicit representation that the tobacco product or its smoke does not contain or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;
- Scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards for obtaining an order under section 911(g)(1); and
- The scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies (section 911(g)(2)(A) of the FD&C Act).

Furthermore, for FDA to issue an exposure modification order, FDA must find that the applicant has demonstrated that:

- The magnitude of overall reductions in exposure to the substance or substances, which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;
- The product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;
- Testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product is or has been demonstrated to be less harmful, or presents or has been demonstrated to present less of a risk of disease than one or more other commercially marketed tobacco products; and
- Issuance of the exposure modification order is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products (section 911(g)(2)(B) of the FD&C Act).

In evaluating the benefit to health of individuals and of the population as a whole under sections 911(g)(1) and (g)(2) of the FD&C Act, FDA must take into account:

- The relative health risks the modified risk tobacco product presents to individuals;
- The increased or decreased likelihood that existing tobacco product users who would otherwise stop using such products will switch to using the modified risk tobacco product;
- The increased or decreased likelihood that persons who do not use tobacco products will start using the modified risk tobacco product;
- The risks and benefits to persons from the use of the modified risk tobacco product compared to the use of smoking cessation drug or device products approved by FDA to treat nicotine dependence; and
- Comments, data, and information submitted to FDA by interested persons (section 911(g)(4) of the FD&C Act).

Furthermore, FDA must ensure that the advertising and labeling of the MRTP enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the tobacco-related diseases and health conditions (section 911(h)(1) of the FD&C Act).

FDA intends to determine whether it will issue an order under section 911(g) within 360 days after the receipt of a complete application and will issue such an order only if the application satisfies all the applicable requirements in section 911.

A risk modification order issued under section 911(g)(1) will be effective for the period of time specified in the order issued by FDA (section 911(h)(4) of the FD&C Act). An applicant to whom a risk modification order is issued under section 911(g)(1) must conduct postmarket surveillance and studies (section 911(i)(1) of the FD&C Act).

An exposure modification order issued under section 911(g)(2) will be effective for a term of not more than 5 years. FDA may renew an exposure modification order if the applicant files a new application, and FDA finds that the requirements for such order under section 911(g)(2) continue to be satisfied (section 911(g)(2)(C)(i) of the FD&C Act). Further, an exposure modification order will be conditioned on the applicant's agreement to conduct postmarket surveillance and studies and to submit the results of such surveillance and studies to FDA annually (section 911(g)(2)(C)(ii) and (iii) of the FD&C Act).

The postmarket surveillance and studies that all applicants who receive orders are required to conduct are intended to determine the effect of issuance of an order on consumer perception, behavior, and health, and enable FDA to review the accuracy of the determinations upon which an order was based (section 911(g)(2)(C)(ii) and (i)(1) of the FD&C Act). An applicant who receives a risk modification order must also conduct postmarket surveillance and studies that provide information FDA determines is otherwise necessary regarding the use or health risks involving the tobacco product (section 911(i)(1) of the FD&C Act).

If the proposed modified risk tobacco product is a new tobacco product within the meaning of section 910(a)(1), the new tobacco product must satisfy any applicable premarket review requirements under section 910 of the FD&C Act, in addition to any requirements under section 911 of the

FD&C Act. A new tobacco product must be found to be substantially equivalent, exempt from the requirement to obtain a substantial equivalence determination, or have a marketing authorization order under section 910(c)(1)(A)(i). The collections of information relating to premarket review described in the ''Guidance for Industry: Section 905(j) Reports: Demonstrating Substantial Evidence for Tobacco Products'' (OMB control number 0910–0673), 21 CFR part 1107 (Establishment Registration, Product Listing, and Substantial Equivalence Reports) (OMB control number 0910–0684), and ''Draft Guidance for Industry: Applications for Premarket Review of New Tobacco Products'' (OMB control number 0910–NEW) have been previously approved, or are pending approval, by OMB. An applicant may file the appropriate report or application to satisfy any applicable premarket review requirements and a separate application under section 911. In the alternative, the applicant may file a single application. The single application must include the information required for the applicable premarket review (i.e., substantial equivalence report, request of exemption from substantial equivalence requirements, or the information required for premarket review under section 910(b) of the FD&C Act), as well as the information required to support issuance of an order under section 911(g) of the FD&C Act. To the extent data or information contained in the premarket review portion of the application is also relevant to or required for the modified risk determination, the applicant may cross-reference that data or information rather than duplicate it in the modified risk portion of the application.

Description of respondents: The respondents to this collection of information are applicants who are responsible for creating and submitting modified risk tobacco product applications and who wish to obtain an FDA order to allow them to market their product. While it is expected that many of the respondents will be manufacturers, respondents could include importers, distributors, and retailers of tobacco products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Information collected (section(s))	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total annual hours
MRTPA (911(d) of FD&C Act)	3	1	3	45,200	135,600
Environmental analysis (21 CFR 25.15)	3	1	3	10	30
Request for a meeting prior to submitting a MRTPA	8	1	8	8	64
Submission of postmarket surveillance and study protocols (911(g)(2)(C)(ii) and 911(i)(2))	3	1	3	30	90
Conduct of postmarket surveillance and studies (911(g)(2)(C)(ii) and 911(i)(1))	5	1	5	40,200	201,000
Annual submission of results of postmarket surveillance and studies (911(g)(2)(C)(iii) and 911(i)(1))	5	1	5	140	700
Requests for renewal (911(g)(2)(C)(i) and 911(h)(4))	1	1	1	140	140
Total Reporting Burden Hours					337,624

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 describes the annual reporting burden as a result of submitting a MRTPA. FDA estimates that it will receive 3 MRTPAs annually and that it will take the applicant 200 hours to collect the information necessary to submit a MRTPA under section 911 of the FD&C Act. FDA estimates it will take the applicant an additional 45,000 hours to conduct studies needed to support its MRTPA. FDA is also including an estimation of the burden associated with preparing environmental analyses. FDA estimates that it will take an additional 10 hours to prepare any environmental analyses. FDA encourages persons considering developing a MRTPA to meet with CTP to discuss MRTPA submission and investigational requirements. FDA anticipates that eight persons considering developing MRTPAs may request meetings with FDA. FDA estimates it will take 8 hours to prepare a meeting request, including background information.

Section 911 of the FD&C Act requires applicants to whom FDA issues orders to conduct postmarket surveillance and studies and submit relevant information to FDA on an annual basis. Applicants must submit and receive FDA approval of surveillance protocols. FDA estimates that it will take 30 hours to collect and submit the protocol information to FDA. FDA estimates it will take the applicant an additional 40,200 hours to conduct the postmarket surveillance and studies. FDA estimates 5 applicants will submit results of postmarket surveillance and studies annually and it will take 140 hours to prepare each submission.

Because orders issued under section 911(g) are valid for only a set number of years, FDA expects applicants will submit requests for renewal. Because the dates on which orders are issued and the length of the period for which the order is valid will vary, FDA expects one request for renewal annually. FDA estimates that it will take 140 hours to prepare the request for renewal.

The total number of hours for this collection of information is estimated to be 337,624 $((3 \times (45{,}200 + 10)) + (8 \times 8) + (3 \times 30) + (5 \times 40{,}200) + (5 \times 140) + (1 \times 140))$. These burden estimates were computed using FDA staff expertise and by reviewing comments received from recent FDA information collections for other tobacco-related initiatives.

IV. Request for Comments

FDA requests comments from interested parties on any of the topics addressed in the draft guidance. In addition, as stated in the ''I. Background'' section, FDA intends to consider the IOM report in preparing the final guidance. Therefore, FDA requests comments from interested parties on the IOM report, which was issued on December 14, 2011. FDA specifically requests comments on:

- *IOM's Recommendation 2:* ''The FDA should establish guidance that conveys an expected sequencing of studies, such that preclinical work is

completed and submitted to the FDA before clinical (human subjects) work commences, and [FDA should establish] that there is a reasonable expectation based on preclinical work that a reduction or lack of harm will be seen in humans.'' Should FDA address expected sequencing of studies in its guidance? If the Agency should, what guidance should the Agency provide?; and

• *IOM's Recommendation 10:* ''MRTP sponsors should consider use of independent third parties to undertake one or more key functions, including the design and conduct of research, the oversight of specific studies, and the distribution of sponsor funds for research. Such independent third parties should be approved by the FDA in advance of the research.'' Should FDA recommend such an approach in its guidance? If the Agency should, what guidance should the Agency provide?

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain an electronic version of the draft guidance document at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: March 28, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–7908 Filed 3–30–12; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0049]

Draft Guidance for Industry: Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under Section 904(a)(3) of the Federal Food, Drug, and Cosmetic Act.'' The purpose of this draft guidance is to assist persons reporting to FDA the quantities of harmful and potentially harmful constituents (HPHCs) in tobacco products and tobacco smoke under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). The draft guidance explains that FDA does not intend, at this time, to enforce reporting on the entire established HPHC list where a manufacturer or importer completes testing and reporting for an abbreviated list of HPHCs within the timeframes specified in the guidance.

DATES: Although you can comment on any guidance at any time (21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 4, 2012. Submit either electronic or written comments on the proposed collection of information by June 4, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance, including comments on the proposed collection of information to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: With regard to the draft guidance: James Flahive, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 1–877–287–1373, *james.flahive@fda.hhs.gov.*

With regard to the proposed collection of information: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amends the FD&C Act and grants FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health generally and to reduce tobacco use by minors. Section 904(a)(3) of the FD&C Act (21 U.S.C. 387d(a)(3)) requires each tobacco product manufacturer or importer, or an agent, to begin reporting to FDA no later than June 22, 2012, ''all constituents, including smoke constituents, identified by [FDA] as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product.'' Reports must be by the brand and by quantity in each brand and subbrand. Section 904(c)(1) states that manufacturers of tobacco products not on the market as of June 22, 2009, must also provide information reportable under section 904(a)(3) at least 90 days prior to introducing the product into interstate commerce.

FDA has taken several steps to identify HPHCs to be reported under section 904(a)(3), including issuing a final guidance discussing FDA's current thinking on the meaning of ''harmful and potentially harmful constituent'' in the context of implementing the HPHC list requirement (76 FR 5387, January 31, 2011). The guidance is available on the Internet at *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm241339.htm.* In addition, on August 12, 2011, FDA issued a document (the HPHC notice; 76 FR 50226) in the **Federal Register** describing the criteria we tentatively concluded we would use in identifying the HPHCs for the established list, including a table of the 96 HPHCs we identified using those criteria, and asking the public and interested parties to submit relevant scientific and other information by October 11, 2011. FDA reviewed comments received in response to the HPHC notice. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the established list of HPHCs as required by section 904(e) of the FD&C Act.

This draft guidance discusses the information to be reported on HPHCs in tobacco products and tobacco smoke under section 904(a)(3) of the FD&C Act. This draft guidance document discusses, among other things: The statutory requirement for testing and

reporting quantities of HPHCs, who tests and reports quantities of HPHCs to FDA, what HPHCs will be the focus of FDA enforcement at this time, when reports are submitted to FDA, what information is reported to FDA, and how the reports should be submitted to FDA. The draft guidance notifies manufacturers and importers that at this time, while industry is developing laboratory capacity to comply with section 904(a)(3), FDA does not intend to enforce the statutory requirement to submit quantities of all constituents identified by FDA as HPHCs by June 22, 2012, where manufacturers or importers complete testing and reporting for an abbreviated list of HPHCs as set forth in the draft guidance. In particular, at this time, for products that were first marketed before June 22, 2012, FDA does not intend to enforce the section 904(a)(3) requirement to test and report quantities of all HPHCs on FDA's established list where: (1) A manufacturer or importer (or agents thereof), other than a small tobacco product manufacturer, submits quantities of the HPHCs on an abbreviated list described in the draft guidance for all of its products, by brand and subbrand, no later than September 22, 2012; or (2) a small tobacco product manufacturer (or agents thereof) submits quantities of HPHCS on the abbreviated list for all of its products, by brand and subbrand, by December 22, 2012. In addition, for products first marketed on or after June 22, 2012, the draft guidance explains that FDA does not intend, at this time, to enforce the requirement in section 904(c)(1) to test and report quantities of all HPHCs on FDA's established list for products not previously on the market if a manufacturer or importer reports quantities for the abbreviated list of HPHCs at least 90 days prior to marketing the product in the United States. In addition, the draft guidance explains that at this time, FDA intends to enforce the HPHC reporting requirements with respect to manufacturers of finished tobacco products for consumer use—cigarettes, smokeless tobacco, and roll-your-own tobacco—and not with respect to manufacturers and importers of other products, such as components sold to manufacturers or consumers for incorporation into finished products.

Although this draft guidance announces an intent to exercise enforcement discretion for a limited time, FDA intends to move toward full implementation and enforcement of the statutory requirement to test and report quantities of all HPHCs on FDA's established list, as appropriate. We anticipate that this guidance will be revised or withdrawn as we move toward full implementation. We intend to use the information submitted under sections 904(a)(3) and 904(c)(1) of the FD&C Act to meet the requirements of section 904(e) of the FD&C Act regarding a list of HPHCs in each tobacco product by brand and by quantity in each brand and subbrand. Also, the information will be used to comply with section 904(d)(1) of the FD&C Act, which requires FDA to publish a list of HPHCs, by brand and by quantity in each brand and subbrand, in a format that is understandable and not misleading to lay persons.

II. Significance of Guidance

FDA is issuing this draft guidance document consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on reporting HPHCs in tobacco products and tobacco smoke under section 904(a)(3) of the FD&C Act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing a notice of the proposed collection of information set forth in the draft guidance for industry entitled ''Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under Section 904(a)(3) of the Federal Food, Drug, and Cosmetic Act.''

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Draft Guidance for Industry: Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under Section 904(a)(3) of the Federal Food, Drug, and Cosmetic Act (OMB Control Number 0910–NEW)

The purpose of the proposed information collection is to allow FDA to collect statutorily mandated information regarding HPHCs in tobacco products and tobacco smoke, by brand and by quantity in each brand and subbrand. The draft guidance provides an abbreviated list of HPHCs on which FDA intends to focus enforcement at this time for each of the following: Cigarette smoke, smokeless tobacco products, and roll-your-own tobacco and cigarette filler.

To facilitate the submission of HPHC information, FDA has developed forms in both paper and electronic formats. Manufacturers or importers, or an agent, may submit information either electronically or in paper format. The FDA eSubmitter tool provides electronic forms to streamline the data entry and submission process for reporting HPHCs. Users of eSubmitter may also populate an Excel file and import data into eSubmitter. FDA also provides paper forms for the submission of section 904(a)(3) reports. FDA intends to place draft copies of the paper forms and screen shots of the electronic form and spreadsheet in this docket.

Whether respondents decide to submit reports electronically or on paper, each form provides instructions for filling out and submitting HPHC information to FDA. The forms contain fields for company information, product information, and HPHC information. The draft guidance provides an abbreviated list of HPHCs on which FDA intends to focus enforcement at this time, and information to assist in the testing and reporting of HPHCs for cigarette smoke and filler, smokeless tobacco, and roll-your-own tobacco. FDA has created forms to assist in the

reporting of HPHC information for each of these product types.

Description of Respondents: The respondents to this collection of information include manufacturers or importers who complete testing and reporting for HPHCs in tobacco products and tobacco smoke under section 904(a)(3) of the FD&C Act. Respondents could also include agents of manufacturers or importers who complete HPHC testing and reporting.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Information collected	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Part 1—Section 904(a)(3) of the FD&C Act (Annualized Estimate of One-time Reporting) [2]					
1. Reporting of Manufacturer/Importer Company and Product Information by Completing Submission Forms					
Cigarette	120	10.10	1,212	2	2,424
Roll-Your-Own	46	3.22	148	2	296
Smokeless	200	1.44	288	2	576
Total					3,296
2. Testing of HPHC Quantities in Products					
Cigarette Filler	120	10.1	1,212	9.42	11,417
Roll-Your-Own	46	3.22	148	9.42	1,394
Smokeless	200	1.44	288	12.06	3,473
Total					16,284
3. Testing of HPHC Quantities in Mainstream Smoke					
Cigarette: International Organization for Standardization (ISO) Regimen	120	10.1	1,212	23.64	28,652
Cigarette: Health Canada Regimen	120	10.1	1,212	23.64	28,652
Total					57,304
Total Section 904(a)(3) Annualized One-Time Burden					76,884
Part 2—Reporting of Section 904(c)(1) New Products (15% of One-Time Burden Totals) [3]					
1. Reporting of Manufacturer/Importer Company and Product Information by Completing Submission Forms					
Cigarette	18	10.10	182	2	364
Roll-Your-Own	7	3.22	23	2	46
Smokeless	30	1.44	43	2	86
Total					496
2. Reporting of HPHC Quantities in Products					
Cigarette Filler	18	10.1	182	9.42	1,714
Roll-Your-Own	7	3.22	23	9.42	217
Smokeless	30	1.44	43	12.06	519
Total					2,450
3. Reporting of HPHC Quantities in Mainstream Smoke					
Cigarette: ISO Regimen	18	10.1	182	23.64	4,302
Cigarette: Health Canada Regimen	18	10.1	182	23.64	4,302
Total					8,604
Total Section 904(c)(1) Burden					11,550
Total Reporting Burden Hours					88,434

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] One-time actual first year burden hours have been annualized over the 3-year OMB period of approval to avoid overcounting the burden each year.

[3] Annual new product reporting under section 904(c)(1) is estimated to be 15% of the annualized one-time burden.

FDA estimates the one-time reporting burden for this guidance would be 230,652 hours during the first year for section 904(a)(3) reporting plus ongoing annual burden of 11,550 hours for section 904(c)(1) reporting. The burden estimate for this collection of information includes the time it will take to read the guidance document, test the products, and prepare the HPHC report.

To avoid overcounting the one-time reporting burden, FDA has divided the first year burden by three, annualizing the one-time burden over the 3-year expected OMB period of approval to avoid double-counting the one-time projected burden. The one-time burden for year one is located in part 1 of table 1 of this document, and includes burden for collections of information gathered under section 904(a)(3). The annualized total one-time burden in part 1 of table 1 is 76,884 hours (230,652 hours divided by 3), which includes 3,296 hours for reporting manufacturer or importer company and product information, 16,284 hours for reporting HPHC quantities in products, and 57,304 hours for reporting HPHC quantities in mainstream smoke.

As shown in table 1, the total annual burden for this collection of information is estimated to be 88,434 hours, which is the annualized one-time burden estimate for section 904(a)(3) associated with the submission of an HPHC (76,884 hours) and the annual burden estimate for section 904(c)(1) (11,550 hours). We have assumed a one-time burden for section 904(a)(3) because this draft guidance is intended to remain in effect while industry is developing laboratory capacity to comply fully with section 904(a)(3) of the FD&C Act. We also assume any new product reporting requirements under section 904(c)(1) will be provided annually to FDA. We also anticipate this guidance will be revised or withdrawn as FDA moves toward full implementation and enforcement of the statutory requirement to report quantities by brand and subbrand of all HPHCs on FDA's established HPHC list.

Part one of table 1 estimates that 366 respondents (120 cigarette manufacturers or importers, 200 smokeless manufacturers, and 46 roll-your-own tobacco manufacturers) will submit 4,942 HPHC reports on a one-time basis (e.g., 1,648 reports on an annualized basis). As noted previously, FDA estimates that it will take the manufacturer, importer, or their agents 230,652 hours on a one time basis, or 76,884 hours annually, to collect the information necessary to test the products and submit an HPHC report by brand and subbrand.

Part one, section one of table 1 addresses the time required for manufacturers and importers to report their company information: Company name; mailing address; telephone and FAX numbers; FDA Establishment Identifier (FEI) number; Data Universal Numbering System (D–U–N–S) number; and point of contact name, mailing address, and telephone and FAX numbers. The first section of table 1 also addresses the time required for manufacturers and importers to report their product information by entering testing information onto the forms: Brand and subbrand name; unique product identification number; type of product identification number; product category and subcategory; and mean weight and standard deviation of tobacco in product. We estimate that the burden is no more than 2 hours per response to report company and product information testing regardless of whether the paper or electronic form (Form FDA 3787) is used. This estimate is not dependent on product type, so the estimated burden is the same for cigarettes, roll-your-own tobacco, and smokeless tobacco products. We estimate that there are 3,636 cigarette subbrands, 445 roll-your-own tobacco subbrands, and 861 smokeless tobacco subbrands (4,942 total subbrands) that must comply with section 904(a)(3) of the FD&C Act. Therefore, the total annualized burden for reporting company and product information is 3,296 hours (4,942 respondents × 2 hours = 9,884 one-time hours divided by 3).

Part one, section two of table 1 addresses the time required from manufacturers and importers to report quantities for HPHCs in their products: Number of replicate measurements; test date range; manufacture date range; extraction method; separation method; detection method; and mean quantity and standard deviation of HPHCs. The burden hour estimates in this section include the time needed to test the tobacco products, draft testing reports, draft the report for FDA, and submit the report to FDA. For cigarette filler, smokeless, and roll your own products, we estimate the burden to draft testing reports, draft the report for FDA, and submit the report to FDA to be 48,852 one-time hours, or 16,284 annualized burden hours. The burden for each product type reflects our estimate of the burden to test the tobacco products (i.e., carry out laboratory work). The per-response burden for testing cigarette filler and roll-your-own tobacco is the same, as the same HPHCs must be measured for both product types. The per-response burden for testing smokeless products is greater than that for the other two product types because more HPHCs must be tested for smokeless products than the other two product types.

Part one, section three of table 1 addresses the time required for manufacturers and importers to report quantities for HPHCs in cigarette smoke: The number of replicate measurements; test date range; manufacture date range; extraction method; separation method; detection method; and mean quantity and standard deviation of HPHCs. The burden estimates include the burden to test the tobacco products, draft testing reports, draft the report for FDA, and submit the report to FDA. We estimate the one-time burden for this section to be 171,912 hours, or 57,304 annualized hours. The annualized burden reflects our estimate of the burden to test the tobacco products (*i.e.,* carry out laboratory work). The burden estimate assumes that manufacturers and importers report HPHC quantities in cigarette mainstream smoke according to the two recommended smoking regimens. The total annualized burden for part one of table 1 (section 904(a)(3) reporting) is 76,884 hours (3,296 hours plus 16,284 hours plus 57,304 hours).

Part two of table 1 contains estimates for new product information received under section 904(c)(1). Manufacturers and importers must report HPHC information under section 904(c)(1) at least 90 days prior to delivery for introduction into interstate commerce. We estimate that approximately 15 percent of FDA currently regulated tobacco products in any given year will require submission of this information. The estimated total annual burden for section 904(c)(1) is 11,550 hours, which includes 496 hours to report manufacturer/importer company and product information, 2,450 hours to report HPHC quantities in products, and 8,604 hours to report HPHC quantities in mainstream smoke.

The estimated total annual burden for the reporting of HPHC under sections 904(a)(3) and 904(c)(1) is 88,434 hours (76,884 annualized burden hours for section 904(a)(3) reporting plus 11,550 annual burden hours for section 904(c)(1) reporting).

We have not estimated any capital costs because we do not believe there are any capital costs associated with this collection. However, you may comment on any specific capital costs that you have identified.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received documents may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain an electronic version of this guidance document at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm.*

Dated: March 23, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–7766 Filed 3–30–12; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0143]

Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke; Established List

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a list.

SUMMARY: The Food and Drug Administration (FDA) is establishing a list of harmful and potentially harmful constituents (HPHCs) in tobacco products and tobacco smoke (the established HPHC list) as required by the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

FOR FURTHER INFORMATION CONTACT: Carol Drew, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the FD&C Act (21 U.S.C. 301 *et seq.*) by, among other things, adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health. Section 904(e) of the FD&C Act (21 U.S.C. 387d(e)), as added by the Tobacco Control Act, requires FDA to establish, and periodically revise as appropriate, ''a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand.''

The Agency has considered comments solicited from the public, as well as scientific and other information, and has developed a list of tobacco product constituents it currently believes are harmful or potentially harmful to health. We are establishing this list as table 1 of this document as required by section 904(e) of the FD&C Act. In this document, we are also providing information about related actions, including the Agency's guidance discussing the meaning of HPHC, the criteria the Agency used to help develop the established HPHC list, the reasons the Agency may add or remove constituents from the established HPHC list consistent with the directive of section 904(e), and the addition of quantities to the list.

II. Background

On January 31, 2011, FDA announced the availability of a guidance entitled '' 'Harmful and Potentially Harmful Constituents' in Tobacco Products as Used in Section 904(e) of the Federal Food, Drug, and Cosmetic Act'' (76 FR 5387) (available at *www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation*) (HPHC final guidance). This guidance represents the Agency's current thinking on the meaning of the term ''harmful and potentially harmful constituent'' in the context of implementing section 904(e) of the FD&C Act. It states: ''FDA believes that the phrase 'harmful and potentially harmful constituent' includes any chemical or chemical compound in a tobacco product or in tobacco smoke: (a) That is or potentially is inhaled, ingested, or absorbed into the body; and (b) that causes or has the potential to cause direct or indirect harm to users or non-users of tobacco products'' (HPHC final guidance at page 2). The HPHC final guidance includes examples of constituents that have the potential to cause direct harm and examples of constituents that have the potential to cause indirect harm: ''Examples of constituents that have the 'potential to cause direct harm' to users or non-users of tobacco products include constituents that are toxicants, carcinogens, and addictive chemicals and chemical compounds. Examples of constituents that have the 'potential to cause indirect harm' to users or non-users of tobacco products include constituents that may increase the exposure to the harmful effects of a tobacco product constituent by: (1) Potentially facilitating initiation of the use of tobacco products; (2) potentially impeding cessation of the use of tobacco products; or (3) potentially increasing the intensity of tobacco product use (e.g., frequency of use, amount consumed, depth of inhalation). Another example of a constituent that has the 'potential to cause indirect harm' is a constituent that may enhance the harmful effects of a tobacco product constituent'' (HPHC final guidance at page 2).

On May 1, 2010, a subcommittee of the Tobacco Products Scientific Advisory Committee (TPSAC),[1] the Tobacco Product Constituents Subcommittee (the subcommittee), was established and charged with making preliminary recommendations to TPSAC on the HPHCs in tobacco products and tobacco smoke. The subcommittee held public meetings on June 8 and 9, 2010, and July 7, 2010. Prior to these meetings, FDA solicited data, information, and/or views on HPHCs in tobacco products and tobacco smoke from the public.[2] At these meetings the subcommittee:

- Reviewed example lists of HPHCs in tobacco products and tobacco smoke developed by other countries and organizations;
- Identified criteria for selecting carcinogens, toxicants, and addictive chemicals or chemical compounds in tobacco products and tobacco smoke;
- Identified chemicals or chemical compounds that met the identified criteria;
- Confirmed the existence of methods for measuring each chemical or chemical compound identified; and
- Identified other potentially important information or criteria for measuring HPHCs in tobacco products or tobacco smoke, such as smoking machine regimens to be used in measuring HPHCs.

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[1] Information about TPSAC as well as information and background materials on TPSAC meetings are available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/default.htm.*

[2] See 75 FR 22147 (April 27, 2010) and 75 FR 33814 (June 15, 2010). Information submitted to the public docket for each of these meetings is available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/ucm222977.htm* and *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/ucm222978.htm.*

The subcommittee made preliminary recommendations to TPSAC.

On August 30, 2010, TPSAC held a public meeting to deliberate on the recommendations from the subcommittee. Prior to this meeting, FDA published a notice in the **Federal Register** soliciting data, information, and/or views from the public on the issues to be discussed at this meeting.[3] FDA asked what criteria TPSAC recommended the Agency use for determining whether a constituent is a carcinogen, toxicant, or addictive chemical or chemical compound that should be included on the established HPHC list. As a result of its discussions, TPSAC recommended to the Agency the following criteria for selecting the established HPHC list:

- Constituents identified as known or probable human carcinogens by either the International Agency for Research on Cancer (IARC), the U.S. Environmental Protection Agency (EPA), or the National Toxicology Program;
- Constituents identified as possible human carcinogens by IARC or EPA and/or identified by the National Institute for Occupational Safety and Health as potential occupational carcinogens;
- Constituents identified by EPA or the Agency for Toxic Substances and Disease Registry (ATSDR) as having adverse respiratory or cardiac effects;
- Constituents identified by the California Environmental Protection Agency as reproductive or developmental toxicants;
- Constituents having, based upon a review of the peer-reviewed literature, evidence of at least two of the following measures of abuse liability (addiction):
  - Central nervous system activity;
  - Animal drug discrimination;
  - Conditioned place preference;
  - Animal self-administration;
  - Human self-administration;
  - Drug liking;
  - Signs of withdrawal; and
- Constituents banned in food (for smokeless tobacco products).

On August 12, 2011, FDA published a notice in the **Federal Register** (76 FR 50226) (the August 12 notice[4]) stating that the Agency had tentatively concluded that it should consider a constituent meeting the criteria listed in that document to be harmful or potentially harmful, such that the constituent should be included on the HPHC list, unless other scientific information obtained by or submitted to the Agency shows that the constituent is not, in fact, harmful or potentially harmful. The August 12 notice also included a list of constituents that was developed by applying this approach to available information and requested that interested persons submit scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke. The August 12 notice stated that the Agency was particularly interested in comments on the following issues: (1) The criteria FDA should use in determining whether a constituent is harmful or potentially harmful such that it should be included on the established HPHC list; (2) whether any chemicals or chemical compounds not listed should be added because they are harmful or potentially harmful, including supporting scientific or other information; and/or (3) whether any chemicals or chemical compounds should be removed because they are not harmful or potentially harmful, including supporting scientific or other information.

The Agency has considered all of the comments submitted to the docket for the August 12 notice and has reviewed scientific and other information submitted to support these comments. Based on the information before it and its own knowledge and expertise, FDA concludes that it should consider a constituent meeting the criteria proposed in the August 12 notice to be harmful or potentially harmful, such that it should be included on the HPHC list, unless other scientific information obtained by or submitted to the Agency shows that the constituent is not, in fact, harmful or potentially harmful. Applying these criteria, and after consideration of comments and supporting information submitted to the docket for the August 12 notice, FDA has developed the established list of harmful and potentially harmful constituents in tobacco products and tobacco smoke as table 1 of this document.

Three constituents included on the list we published for comment in the August 12 notice are not included in table 1. Based on information submitted to the docket and our review of the scientific literature, we have determined not to include dibenz[a,h]acridine, dibenz[a,j]acridine and 7H-dibenz[c,g]carbazole on the established HPHC list at this time because there is not sufficient evidence that they are found in tobacco products or tobacco smoke. This decision is based on information presently before us, and may be revised, consistent with the directive in section 904(e) of the FD&C Act that FDA periodically revise the established list as appropriate.

We note that certain metals on the established HPHC list (beryllium, cadmium, chromium, cobalt, lead, mercury, nickel, and selenium) may exist in tobacco products and tobacco smoke in the elemental form and/or in compounds. Both the elemental and compound forms are harmful and/or potentially harmful under our criteria. Identification of a metal on the established HPHC list therefore refers to the metal regardless of whether it is found in its elemental form or as a metal-bound compound. For example, beryllium includes both elemental beryllium and beryllium found in beryllium compounds.

FDA recognizes that the established HPHC list may not include all constituents that are ''harmful or potentially harmful.'' For example, several of the criteria described in this document depend on a chemical or chemical compound being both studied and listed by another entity, such as constituents identified by EPA or ATSDR as having adverse respiratory or cardiac effects. The fact that a constituent has not been so identified by EPA or ATSDR could be because it has not been adequately studied or has not yet been systematically reviewed by relevant Agencies, rather than because the constituent does not have adverse respiratory or cardiac effects. Moreover, FDA has only focused on the five disease outcomes of cancer, cardiovascular disease, respiratory effects, developmental or reproductive effects, and addiction. FDA intends to review other disease outcomes to assess whether additional chemicals or chemical compounds in tobacco products or tobacco smoke are harmful or potentially harmful constituents that contribute to the risk of other diseases.

In addition, the criteria FDA has selected are limited to those that relate to carcinogens, toxicants, and addictive chemicals or chemical compounds in tobacco products and tobacco smoke. We intend to consider whether additional criteria should be selected to help identify other classes of harmful or potentially harmful chemicals and chemical compounds for inclusion on the established HPHC list, and whether individual constituents should be added. Just as these types of new information may lead to additions to the established HPHC list, FDA recognizes

[3] See 75 FR 47308 (August 5, 2010). Information submitted by the public to the docket for this meeting is available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/ucm232799.htm*.

[4] ''Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke; Request for Comments,'' 76 FR 50226 (August 12, 2011).

that it may become aware of new scientific information about constituents of tobacco products that make it appropriate to remove one or more of the constituents that appear on the list. Thus, FDA will continue to review scientific information about tobacco product constituents. For these reasons and consistent with the directive of section 904(e) of the FD&C Act, FDA intends to periodically revise as appropriate the established HPHC list.

Currently, the established HPHC list in table 1 does not contain quantities of the HPHCs by brand and subbrand. Beginning June 22, 2012, sections 904(a)(3) and 904(c)(1) of the FD&C Act require tobacco product manufacturers and importers or their agents to submit a list of constituents, including smoke constituents as applicable, identified by FDA as harmful or potentially harmful to health in each of their tobacco products, by brand and by quantity in each brand and subbrand. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of a draft guidance for industry to assist persons reporting to FDA the quantities of harmful and potentially harmful constituents in tobacco products and tobacco smoke. FDA intends to use the data and information submitted under sections 904(a)(3) and 904(c)(1) to, as directed by section 904(d)(1) of the FD&C Act, place on public display the list of HPHCs established under section 904(e), by brand and by quantity in each brand and subbrand, in a format ''that is understandable and not misleading to a lay person.''

TABLE 1—ESTABLISHED LIST OF THE CHEMICALS AND CHEMICAL COMPOUNDS IDENTIFIED BY FDA AS HARMFUL AND POTENTIALLY HARMFUL CONSTITUENTS IN TOBACCO PRODUCTS AND TOBACCO SMOKE

Constituent	Carcinogen (CA), respiratory toxicant (RT), cardiovascular toxicant (CT), reproductive or developmental toxicant (RDT), addictive (AD)
Acetaldehyde	CA, RT, AD
Acetamide	CA
Acetone	RT
Acrolein	RT, CT
Acrylamide	CA
Acrylonitrile	CA, RT
Aflatoxin B1	CA
4-Aminobiphenyl	CA
1-Aminonaphthalene	CA
2-Aminonaphthalene	CA
Ammonia	RT
Anabasine	AD
o-Anisidine	CA
Arsenic	CA, CT, RDT
A-α-C (2-Amino-9*H*-pyrido[2,3-*b*]indole)	CA
Benz[*a*]anthracene	CA, CT
Benz[*j*]aceanthrylene	CA
Benzene	CA, CT, RDT
Benzo[*b*]fluoranthene	CA, CT
Benzo[*k*]fluoranthene	CA, CT
Benzo[*b*]furan	CA
Benzo[*a*]pyrene	CA
Benzo[*c*]phenanthrene	CA
Beryllium	CA
1,3-Butadiene	CA, RT, RDT
Cadmium	CA, RT, RDT
Caffeic acid	CA
Carbon monoxide	RDT
Catechol	CA
Chlorinated dioxins/furans	CA, RDT
Chromium	CA, RT, RDT
Chrysene	CA, CT
Cobalt	CA, CT
Coumarin	Banned in food
Cresols (o-, m-, and p-cresol)	CA, RT
Crotonaldehyde	CA
Cyclopenta[*c,d*]pyrene	CA
Dibenz[*a,h*]anthracene	CA
Dibenzo[*a,e*]pyrene	CA
Dibenzo[*a,h*]pyrene	CA
Dibenzo[*a,i*]pyrene	CA
Dibenzo[*a,l*]pyrene	CA
2,6-Dimethylaniline	CA
Ethyl carbamate (urethane)	CA, RDT
Ethylbenzene	CA
Ethylene oxide	CA, RT, RDT
Formaldehyde	CA, RT
Furan	CA
Glu-P-1 (2-Amino-6-methyldipyrido[1,2-*a*:3',2'-*d*]imidazole)	CA

TABLE 1—ESTABLISHED LIST OF THE CHEMICALS AND CHEMICAL COMPOUNDS IDENTIFIED BY FDA AS HARMFUL AND POTENTIALLY HARMFUL CONSTITUENTS IN TOBACCO PRODUCTS AND TOBACCO SMOKE—Continued

Constituent	Carcinogen (CA), respiratory toxicant (RT), cardiovascular toxicant (CT), reproductive or developmental toxicant (RDT), addictive (AD)
Glu-P-2 (2-Aminodipyrido[1,2-*a*:3',2'-*d*]imidazole)	CA
Hydrazine	CA, RT
Hydrogen cyanide	RT, CT
Indeno[*1,2,3-cd*]pyrene	CA
IQ (2-Amino-3-methylimidazo[4,5-*f*]quinoline)	CA
Isoprene	CA
Lead	CA, CT, RDT
MeA-α-C (2-Amino-3-methyl)-9*H*-pyrido[2,3-*b*]indole)	CA
Mercury	CA, RDT
Methyl ethyl ketone	RT
5-Methylchrysene	CA
4-(Methylnitrosamino)-1-(3-pyridyl)-1-butanone (NNK)	CA
Naphthalene	CA, RT
Nickel	CA, RT
Nicotine	RDT, AD
Nitrobenzene	CA, RT, RDT
Nitromethane	CA
2-Nitropropane	CA
N-Nitrosodiethanolamine (NDELA)	CA
N-Nitrosodiethylamine	CA
N-Nitrosodimethylamine (NDMA)	CA
N-Nitrosomethylethylamine	CA
N-Nitrosomorpholine (NMOR)	CA
N-Nitrosonornicotine (NNN)	CA
N-Nitrosopiperidine (NPIP)	CA
N-Nitrosopyrrolidine (NPYR)	CA
N-Nitrososarcosine (NSAR)	CA
Nornicotine	AD
Phenol	RT, CT
PhIP (2-Amino-1-methyl-6-phenylimidazo[4,5-*b*]pyridine)	CA
Polonium-210	CA
Propionaldehyde	RT, CT
Propylene oxide	CA, RT
Quinoline	CA
Selenium	RT
Styrene	CA
o-Toluidine	CA
Toluene	RT, RDT
Trp-P-1 (3-Amino-1,4-dimethyl-5*H*-pyrido[4,3-*b*]indole)	CA
Trp-P-2 (1-Methyl-3-amino-5*H*-pyrido[4,3-*b*]indole)	CA
Uranium-235	CA, RT
Uranium-238	CA, RT
Vinyl acetate	CA, RT
Vinyl chloride	CA

Dated: March 23, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012-7727 Filed 3-30-12; 11:15 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 24, 2012, from 8:30 a.m. to 5 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding

special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Glendolynn S. Johnson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., WO31–2417, Silver Spring, MD 20993–0002, (301) 796–9001, fax: (301) 847–8533, email: *PCNS@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 202737, for tafamidis meglumine capsules, proposed trade name VYNDAQEL, submitted by FoldRx Pharmaceuticals, Inc., a subsidiary of Pfizer, Inc. The proposed indication is for the treatment of transthyretin (TTR) familial amyloid polyneuropathy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 10, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 2, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 3, 2012.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Glendolynn S. Johnson at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 29, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–7967 Filed 4–2–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

[DHS Docket No. ICEB–2012–0002]

RIN 1653–ZA04

Employment Authorization for Syrian F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of Civil Unrest in Syria Since March 2011

AGENCY: U.S. Immigration and Customs Enforcement; DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) has suspended certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Syria and who are experiencing severe economic hardship as a direct result of the civil unrest in Syria since March 2011. The Secretary has determined that a suspension of certain regulatory requirements for Syrian citizens who are F–1 nonimmigrant students is warranted because it will provide relief to these F–1 students so they may obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 student status. F–1 students who are granted employment authorization by means of this notice will be deemed to be engaged in a ''full course of study'' for the duration of their employment authorization, provided that they satisfy the minimum course load requirement described in this notice.

DATES: This notice is effective April 3, 2012 and will remain in effect until October 3, 2013.

FOR FURTHER INFORMATION CONTACT: Louis Farrell, Director, Student and Exchange Visitor Program; MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Washington, DC 20536–5600; (703) 603–3400. This is not a toll-free number. Program information can be found at *http://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary of Homeland Security (Secretary) is exercising her authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment. F–1 students granted employment authorization by means of this notice will be deemed to be engaged in a ''full course of study'' for the duration of their employment authorization if they satisfy the minimum course load set forth in this notice. *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 students whose country of citizenship is Syria and who were lawfully present in the United States in F–1 nonimmigrant status on April 3, 2012 under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i) and (1) are enrolled in an institution that is Student and Exchange Visitor Program (SEVP) certified for enrollment for F–1 students; (2) are currently maintaining

F–1 status; and (3) are experiencing severe economic hardship as a direct result of the civil unrest in Syria since March 2011.

This notice applies to both undergraduate and graduate students, as well as elementary school, middle school, and high school students. F–1 students covered by this notice who transfer to other academic institutions that are SEVP-certified for enrollment of F–1 students remain eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS is taking action to provide relief to F–1 students whose country of citizenship is Syria and who are experiencing severe economic hardship as a direct result of the civil unrest in Syria since March 2011. These students may obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 status.

The crisis in Syria and economic sanctions imposed by the international community have negatively affected the whole of the Syrian economy. Given the current conditions in Syria, affected students whose primary means of financial support comes from Syria may now need to be exempt from the normal student employment requirements to be able to continue their studies in the United States and meet basic living expenses. According to DHS records, there are over 500 students from Syria enrolled in the United States for the current school year. The Secretary has determined, after consultation with appropriate government agencies, including the Department of State (DOS), that there exist extraordinary and temporary conditions in Syria since at least March 2011 that prevent Syrian nationals from returning to their home country in safety. The brutal government crackdown and the overall lack of security have made it unfeasible for students to safely return to Syria for the foreseeable future. To ameliorate the hardship arising from the lack of financial support from family members and others in Syria, and to facilitate the students' continued studies in the United States, DHS is suspending the applicability of certain requirements governing on-campus and off-campus employment.

What is the minimum course load requirement set forth in this notice?

Undergraduate students who are granted on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester/quarter hours of instruction per academic term. Graduate-level F–1 students who are granted on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester/quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). In addition, F–1 students (both undergraduate and graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless the student's course of study is in a language study program. *See* 8 CFR 214.2(f)(6)(i)(G). Elementary school, middle school, and high school students must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E).

May Syrian F–1 students who already have on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. Syrian F–1 students who already have on-campus or off-campus employment authorization may benefit under this notice, which suspends regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i)(A) and (B) and the employment eligibility requirements under 8 CFR 214.2(f)(9) as specified in this notice. Such Syrian F–1 students may benefit without having to apply for a new Form I–766, *Employment Authorization Document* (EAD). To benefit from this notice, the student must request that his or her designated school official (DSO) enter the following statement in the remarks field of the Student and Exchange Visitor Information System (SEVIS) student record, which will be reflected on the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status:

> Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of employment] until [DSO must insert the student's program end date, October 3, 2013, or the current EAD expiration date (if the student is currently working off campus), whichever date comes first.

Must the F–1 student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her full course of study?

No. F–1 students who are granted employment authorization under this notice will be deemed to be engaged in a ''full course of study'' for the duration of their employment authorization, provided that qualifying undergraduate level F–1 students remain registered for a minimum of six semester/quarter hours of instruction per academic term, and qualifying graduate level F–1 students remain registered for a minimum of three semester/quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Such students will not be required to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 status.

Will F–2 dependents (spouse or minor children) of F–1 students covered by this notice be eligible to apply for employment authorization?

No. An F–2 spouse or minor child of an F–1 student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 status. *See* 8 CFR 214.2(f)(15)(i).

Will the suspension of the applicability of the standard student employment requirements apply to aliens who are granted an F–1 visa after this notice is published in the Federal Register?

No. The suspension of the applicability of the standard regulatory requirements only applies to those F–1 students whose country of citizenship is Syria and who were lawfully present in the United States in F–1 nonimmigrant status on April 3, 2012 under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i) and (1) are enrolled in an institution that is SEVP certified for enrollment of F–1 students; (2) are currently maintaining F–1 status; and (3) are experiencing severe economic hardship as a direct result of the civil unrest in Syria. F–1 students who do not meet these requirements do not qualify for the suspension of the applicability of the standard regulatory requirements, even if they are experiencing severe economic hardship as a direct result of the civil unrest in Syria since March 2011.

Does this notice apply to an F–1 student who departs the United States after this notice is published in the Federal Register and who needs to obtain a new F–1 visa before he or she may return to the United States to continue his or her educational programs?

Yes, provided that the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. Subject to the specific terms of this notice, the normal rules for visa issuance (including those related to public charge and nonimmigrant intent) remain applicable to nonimmigrants that need to apply for a new F–1 visa in order to continue their educational programs in the United States.

Does this notice apply to elementary school, middle school, and high school students in F–1 status?

Yes. But this notice does not reduce the required course load for elementary school, middle school, or high school students in F–1 status. Such students must maintain the minimum number of hours of class attendance per week prescribed by the school for normal progress toward graduation. *See* 8 CFR 214.2(f)(6)(i)(E). Eligible F–1 students from Syria enrolled in an elementary school, middle school, or high school do benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session. With regard to off-campus employment, elementary school, middle school, and high school students benefit from the suspension of the requirement that a student must have been in F–1 status for one full academic year in order to be eligible for off-campus employment and the requirement that limits a student's work authorization to no more than 20 hours per week of off-campus employment while school is in session. DHS notes, however, that the suspension of these requirements is solely for DHS purposes of determining valid F–1 status. Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors. The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 students—regardless of educational level—as required by the regulations at 8 CFR 214.2(f)(9)(i) and (f)(9)(ii).

On-Campus Employment Authorization

Will F–1 students who are granted on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For F–1 students covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 student's on-campus employment to 20 hours per week while school is in session. A student whose country of citizenship is Syria and who is experiencing severe economic hardship as result of civil unrest in Syria since March 1, 2011 is authorized to work more than 20 hours per week while school is in session if his or her DSO has entered the following statement in the remarks field of the SEVIS student record, which will be reflected on the student's Form I–20:

> Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of employment] until [DSO must insert the student's program end date or October 3, 2013, whichever date comes first].

To obtain on-campus employment authorization, the student must demonstrate to his or her DSO that the employment is necessary to avoid severe economic hardship that is directly resulting from the civil unrest in Syria. A student authorized by his or her DSO to engage in on-campus employment by means of this notice does not need to make any filing with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting fulltime work on-campus when school is not in session or during school vacations apply. *See* 8 CFR 214.2(f)(9)(i).

Will F–1 students who are granted on-campus employment authorization under this notice be authorized to reduce their normal course load and still maintain their F–1 nonimmigrant status?

Yes. F–1 students who are granted on-campus employment authorization under this notice will be deemed to be engaged in a ''full course of study'' for the purpose of maintaining their F–1 status for the duration of their on-campus employment if they satisfy the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization for reduced course load is solely for DHS purposes of determining valid F–1 status. Nothing in this notice mandates that a school allow a student to take a reduced course load if the reduction would not meet the school's minimum course load requirement for continued enrollment.[1]

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For F–1 students covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 status for one full academic year in order to be eligible for off-campus employment;

(b) The requirement that an F–1 student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study; and

(c) The requirement that limits a student's work authorization to no more than 20 hours per week of off-campus employment while school is in session.

Will F–1 students who are granted off-campus employment authorization under this notice be authorized to reduce their normal course load and still maintain their F–1 nonimmigrant status?

Yes. F–1 students who are granted employment authorization by means of this notice will be deemed to be engaged in a ''full course of study'' for purpose of maintaining their F–1 status for the duration of their employment authorization if they satisfy the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization for reduced course load is solely for DHS purposes of determining valid F–1 status. Nothing in this notice mandates that a school allow a student to take reduced course load if such reduced course load would not meet the school's minimum course load requirement.[2]

[1] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, Web site, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[2] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, Web site, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

How may Syrian F–1 students obtain employment authorization for off-campus employment with a reduced course load under this notice?

F–1 students must file a Form I–765 *Application for Employment Authorization* with USCIS if they wish to apply for off-campus employment authorization based on severe economic hardship resulting from the civil unrest in Syria since March 1, 2011. Filing instructions are located at: *http://www.uscis.gov/i-765.*

Fee considerations. Submission of a Form I–765 currently requires payment of a $380 fee. If the applicant is unable to pay the fee, he or she may submit a completed Form I–912, *Request for Fee Waiver,* along with the Form I–765 *Application for Employment Authorization.* The applicant must follow all form instructions associated with the Form I–912, which are available at: *http://www.uscis.gov/feewaiver.* The submission must include an explanation of why he or she should be granted the fee waiver and the reasons for his or her inability to pay. *See* 8 CFR 103.7(c).

Supporting documentation. An F–1 student seeking off-campus employment authorization due to severe economic hardship must demonstrate to the DSO at the school where the F–1 student is enrolled that this employment is necessary to avoid severe economic hardship and that the hardship is resulting from the civil unrest in Syria since March 1, 2011. If the DSO agrees that the student should receive such employment authorization, he or she must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on the student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or October 3, 2013, whichever date comes first.

The student must then file the properly endorsed Form I–20 and Form I–765, according to the instructions for the Form I–765. The student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that a student be approved for Special Student Relief, the DSO certifies that:

(a) The student is in good academic standing as determined by the DSO;

(b) The student is a citizen of Syria and is experiencing severe economic hardship as a direct result of the civil unrest in Syria since March 1, 2011, as documented on the Form I–20;

(c) The student is carrying a full course of study at the time of the request for employment authorization;

(d) The student will be registered for the duration of his or her authorized employment for a minimum of six semester or quarter hours of instruction per academic term if the student is at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; and

(e) The off-campus employment is necessary to alleviate severe economic hardship to the individual caused by the civil unrest in Syria since March 1, 2011.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the student should:

(a) ensure that the application package includes: (1) A completed Form I–765; (2) the required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c); and (3) a signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' Failure to include this notation may result in significant processing delays. If USCIS approves the student's Form I–765, the USCIS official will send the student a Form I–766 EAD as evidence of his or her employment authorization. The EAD will contain an expiration date that does not exceed the student's program end date.

Temporary Protected Status Considerations

Can an F–1 student apply for Temporary Protected Status and for benefits under this notice at the same time?

Yes. An F–1 student who has not yet applied for Temporary Protected Status (TPS) or for student relief under this notice has two options. Under the first option, the student may file the TPS application according to the instructions in the **Federal Register** Notice designating Syria for TPS. *See* 77 FR 19026, March 29, 2012.

All TPS applicants must file a Form I–821 *Application for Temporary Protected Status,* along with Form I–765, even if the applicants are not seeking employment authorization under TPS. The fee (or a properly documented fee waiver request) for Form I–765 is required only if the applicant is seeking employment authorization under TPS. *See* 8 CFR 244.6. If the student files a TPS application and requests employment authorization under TPS, once the student receives the TPS-related EAD, the student may request that his or her DSO make the required entry in SEVIS, issue an updated Form I–20, as described in this notice, and note that the student has been authorized to carry a reduced course load and is working pursuant to a TPS-related EAD. So long as the student maintains the minimum course load described in this notice, does not otherwise violate his or her nonimmigrant status as provided under 8 CFR 214.1(g), and maintains his or her TPS, then the student maintains F–1 status and TPS concurrently. Under the second option, the student may apply for an EAD under student relief. In this instance, Form I–765 must be filed with the location specified in the filing instructions. At the same time, the student may file a separate TPS application, but must submit the TPS application according to the instructions provided in the **Federal Register** Notice designating Syria for TPS. Because the student has already applied for employment authorization under student relief, the Form I–765 submitted as part of the TPS application is without fee and the applicant should not check any of the boxes requesting a TPS-related EAD. Again, the student will be able to maintain F–1 status and TPS.

When a student applies simultaneously for TPS status and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The student must maintain normal course load requirements for a full course of study unless or until he or she is granted employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a student to drop below 12 credit hours. Once approved for ''severe economic hardship'' employment authorization, the student may drop below 12 credit hours (with a minimum of six semester or quarter hours of instruction per academic term if the student is at the undergraduate level, or a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level). *See* 8 CFR 214.2(f)(6), 214.2(f)(5)(v), 214.2(f)(9)(i) and (ii).

If a student has been approved for employment authorization under TPS, how does he or she apply for authorization to take a reduced course load under this notice?

There is no further application process. The student only needs to demonstrate economic hardship caused by the March 1, 2011 civil unrest in Syria to his or her DSO and receive the DSO recommendation in SEVIS. No other EAD will be issued.

Can a student who has been granted TPS, and has allowed his or her F–1 status to lapse, apply for reinstatement to F–1 student status?

Yes. Current regulations permit a student who falls out of student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). For example, this provision would apply to a student who worked on a TPS-related EAD or dropped his or her course load before publication of this notice, and therefore fell out of student status. The student must satisfy the criteria set forth in the student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief until October 3, 2013 to a specific group of F–1 students whose country of citizenship is Syria. DHS will continue to monitor the situation in Syria. Should the special provisions authorized by this notice need to be modified or extended, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act

An F–1 student seeking off-campus employment authorization due to severe economic hardship must demonstrate to the DSO at the school where he or she is enrolled that this employment is necessary to avoid severe economic hardship. If the DSO agrees that the student should receive such employment authorization, he or she must recommend application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is currently contained in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows F–1 students whose country of citizenship is Syria and who are experiencing severe economic hardship as a direct result of civil unrest in Syria since March 1, 2011, to obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load, while continuing to maintain their F–1 student status.

To apply for work authorization an F–1 student must complete and submit currently approved Form I–765 according to the instructions on the form. The authority to collect the information contained on the current Form I–765 has previously been approved by OMB under the Paperwork Reduction Act (PRA) under OMB Control No. 1615–0040. Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Janet Napolitano,

Secretary.

[FR Doc. 2012–7960 Filed 4–2–12; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4061–DR; Docket ID FEMA–2012–0002]

West Virginia; 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 West Virginia (FEMA–4061–DR), dated March 22, 2012, and related determinations.

DATES: *Effective Date:* March 22, 2012.

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 March 22, 2012, 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 West Virginia resulting from severe storms, flooding, mudslides, and landslides beginning on March 15, 2012, and continuing, 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 West Virginia.

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 Individual Assistance and 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, Hazard Mitigation, and Other Needs Assistance 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 time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Deanne Criswell, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Logan County for Individual Assistance.

Lincoln, Logan, and Mingo Counties for Public Assistance.

All counties within the State of West Virginia 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. 2012–7930 Filed 4–2–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4060–DR; Docket ID FEMA–2012–0002]

Tennessee; 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 Tennessee (FEMA–4060–DR), dated March 16, 2012, and related determinations.

DATES: *Effective Date:* March 16, 2012.

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 March 16, 2012, 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 Tennessee resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of February 29 to March 2, 2012, 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 Tennessee.

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 Individual 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 Hazard Mitigation and Other Needs Assistance 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 time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Bradley, Claiborne, Cumberland, DeKalb, Hamilton, Jackson, McMinn, Monroe, Overton, and Polk Counties for Individual Assistance.

All counties within the State of Tennessee 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. 2012–7929 Filed 4–2–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4058–DR; Docket ID FEMA–2012–0002]

Indiana; 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 Indiana (FEMA–4058–DR), dated March 9, 2012, and related determinations.

DATES: *Effective Date:* March 9, 2012.

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 March 9, 2012, 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 Indiana resulting from severe storms, straight-line winds, and tornadoes during the period of February 29 to March 3, 2012, 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 Indiana.

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 Individual 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 Hazard Mitigation and Other Needs Assistance 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 time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gregory W. Eaton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Indiana have been designated as adversely affected by this major disaster:

Clark, Jefferson, Ripley, Scott, Warrick, and Washington Counties for Individual Assistance.

All counties within the State of Indiana 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. 2012–7928 Filed 4–2–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4059–DR; Docket ID FEMA–2012–0002]

West Virginia; 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 West Virginia (FEMA–4059–DR), dated March 16, 2012, and related determinations.

DATES: *Effective Date:* March 16, 2012.

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 March 16, 2012, 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 West Virginia resulting from severe storms, tornadoes, flooding, mudslides, and landslides during the period of February 29 to March 5, 2012, 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 West Virginia.

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 Individual Assistance and 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, Hazard Mitigation, and Other Needs Assistance 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 time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Deanne Criswell, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Lincoln, Marion, and Wayne Counties for Individual Assistance.

Doddridge, Harrison, Lincoln, Marion, Mingo, Monongalia, Preston, Ritchie, Roane, Taylor, and Wayne Counties for Public Assistance.

All counties within the State of West Virginia 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. 2012–7927 Filed 4–2–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4057–DR; Docket ID FEMA–2012–0002]

Kentucky; 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 Commonwealth of Kentucky (FEMA–4057–DR), dated March 6, 2012, and related determinations.

DATES: *Effective Date:* March 13, 2012.

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 Commonwealth of Kentucky 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 March 6, 2012.

Grayson, Larue, Ohio, Russell, and Trimble Counties for Individual 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. 2012–7926 Filed 4–2–12; 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–2012–0002]

Texas; Amendment No. 8 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:* March 15, 2012.

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.

Erath, Wichita, and Midland 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. 2012–7925 Filed 4–2–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities; New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: E-Verify 2012 Web User Survey; OMB Control No. 1615–New.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on January 18, 2012, at 77 FR 2559, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 3, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via email at *uscisfr.comment@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov*. When submitting comments by email please make sure to add E-Verify 2012 Web User Survey in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* E-Verify 2012 Web User Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number; 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.* E-Verify 2012 Web User Survey is necessary in order for U.S. Citizenship and Immigration Services (USCIS) to obtain data from E-Verify employers in anticipation of the enactment of mandatory state and/or national eligibility verification programs for all or a substantial number of employers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,800 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,400 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 Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: March 28, 2012.

Laura Dawkins,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–7907 Filed 4–2–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2522–12; DHS Docket No. USCIS 2012–0007]

RIN 1615–ZB12

Designation of Syrian Arab Republic for Temporary Protected Status

Correction

In notice document 2012–7498 appearing on pages 19026 through 19030 in the issue of Thursday, March 29, 2012, make the following corrections:

1. On page 19026, third column, in the **DATES** section, in the last sentence, ''September 30, 2013'' should read ''September 25, 2012.''

2. On page 19029, in the first column, the fourth line from the top, ''September 30, 2013'' should read ''September 25, 2012.''

[FR Doc. C1–2012–7498 Filed 4–2–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

[NPS–NERO–GATE–0112–9494; 1770–OZC]

Establishment of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice and Call for Nominations.

SUMMARY: The Secretary of the Interior (Secretary) is announcing the establishment of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (Committee). The purpose of the Committee is to advise the Secretary, through the Director of the National Park Service, on the development of a reuse plan and on matters relating to future uses of the Fort Hancock Historic Landmark District of Gateway National Recreation area.

The Department of the Interior is seeking nominations for individuals to be considered as Committee members. Nominations should describe and document the proposed member's qualifications for membership to the Committee, and include a resume listing their name, title, address, telephone, email, and fax number.

DATES: Written nominations must be received by May 3, 2012.

ADDRESSES: Send nominations to: Gateway National Recreation Area, Public Affairs Office, 210 New York Avenue, Staten Island, New York 10305.

FOR FURTHER INFORMATION CONTACT: Gateway National Recreation Area, Public Affairs Office, 210 New York Avenue, Staten Island, New York, 10305, (718) 354–4606; or via email at *http://www.nps.gov/gate/contacts.htm.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2) and with the concurrence of the General Services Administration, the Department of the Interior is announcing the establishment of an advisory committee for the Gateway National Recreation Area Fort Hancock Historic Landmark District. The Committee is a discretionary advisory committee established under the authority of the Secretary of the Interior.

The Committee will operate under the provisions of the FACA and will report to the Secretary of the Interior through the Director of the National Park Service, with the Superintendent of the Gateway National Recreation Area as the Designated Federal Officer (DFO). The Gateway National Recreation Area will provide administrative and logistical support to the Committee.

The Committee is being established to provide advice on the development of a specific reuse plan and on matters relating to the future uses of the Fort Hancock Historic Landmark District within the Sandy Hook Unit of Gateway National Recreation Area. The Committee will provide guidance to the National Park Service in developing a plan for reuse of more than 30 historic buildings that the NPS has determined are excess to its needs and eligible for lease under 16 U.S.C. 1 *et seq.,* particularly 16 U.S.C. 1a–2(k), and 16 U.S.C. 470h–3, or under agreement through appropriate authorities.

Members of the Committee will include representatives from, but not limited to, the following interest groups: the natural resource community, the business community, the cultural resource community, the real estate community; the recreation community; the education community, the hospitality community, and the scientific community. Members of the Committee will also consist of representatives from the following municipalities: the Borough of Highlands, the Borough of Sea Bright, the Borough of Rumson, Middletown Township, and Monmouth County Freeholders.

Committee members will be selected based on the following criteria: (1) Ability to collaborate, (2) the ability to understand NPS management and policy, and (3) connection with local communities.

No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Committee.

The Committee will meet approximately 4–6 times annually, and at such times as designated by the DFO.

Members of the Committee will serve without compensation.

Certification Statement: I hereby certify that the establishment of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee is necessary, in the public interest, established under the authority of the Secretary of the Interior.

Dated: March 14, 2012.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2012–7845 Filed 4–2–12; 8:45 am]

BILLING CODE 4310–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–14015; 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 Sealaska Corporation. The decision approves conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601, *et seq.*). The lands being approved for conveyance are lands originally selected under ANCSA in the withdrawal area for Kassan, Alaska. The lands are located in:

Copper River Meridian, Alaska

T. 74 S., R. 85 E.

Secs. 15, 16, 21 and 22.

Containing approximately 805 acres.

Notice of the decision will also be published four times in the *Ketchikan 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 May 3, 2012 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 email, 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 email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Joe J. Labay,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. 2012–7898 Filed 4–2–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000: HAG12–0140]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 11 S., R. 44 E., accepted March 2, 2012
T. 4 S., R. 3 E., accepted March 12, 2012
T. 18 S., R. 34 E., accepted March 22, 2012

Washington

T. 22 N., R. 11 W., accepted March 22, 2012

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. 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: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Timothy J. Moore,

Acting Chief, Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2012–8006 Filed 4–2–12; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[DN 2889]

Certain Computer and Computer Peripheral Devices and Components Thereof and Products Containing the Same; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Computer and Computer Peripheral Devices and Components Thereof and Products Containing the Same,* DN 2889; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: 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 and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Technology Properties Limited, LLC on March 27, 2012. 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 computer and computer peripheral devices and components thereof and products containing the same. The complaint names as respondents Acer Inc. of Taiwan; Brother Industries, Ltd. of Japan; Canon Inc. of Japan; Dane-Elec Memory of France; Dell Inc. of TX; Falcon Northwest Computer Systems, Inc. of OR; Fujitsu Limited of Japan; Jasco Products Company of OK; Hewlett-Packard Company of CA; HiTi Digital, Inc. of Taiwan; Kingston Technology Company, Inc. of CA; Micron Technology, Inc. of ID; Lexar Media, Inc. of CA; Microdia Limited of CA; Newegg Inc. of CA; Rosewell Inc. of CA; Sabrent of CA; Samsung Electronics Co., Ltd. of Korea; Seiko Epson

Corporation of Japan; Shuttle Inc. of Taiwan; and Systemax Inc. of NY.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2889'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: March 29, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–7936 Filed 4–2–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–741/749]

Certain Liquid Crystal Display Devices, Including Monitors, Televisions, Modules, and Components Thereof; Notice of Commission Determination To Review-In-Part a Final Determination; Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on January 12, 2012 in the above-captioned investigation.

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 Inv. No. 337–TA–741 on October 18, 2010, based on a complaint filed by Thomson Licensing SAS of France and Thomson Licensing LLC of Princeton, New Jersey (collectively ''Thomson''). 75 *FR* 63856 (Oct. 18, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, by reason of infringement of various claims of United States Patent Nos. 6,121,941 (''the '941 patent''); 5,978,063 (''the '063 patent''); 5,648,674 (''the '674 patent''); 5,621,556 (''the '556 patent''); and 5,375,006 (''the '006 patent''). The Commission instituted Inv. No. 337–TA–749 on November 30, 2010, based on a complaint filed by Thomson. 75 *FR* 74080 (Nov. 30, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 by reason of infringement of various claims of the '063, '556, and '006 patents. On January 5, 2011, the Commission consolidated the two investigations. The respondents are Chimei InnoLux Corporation of Miaoli County, Taiwan and InnoLux Corportation of Austin, Texas (collectively, ''CMI''); MStar Semiconductor Inc. of ChuPei, Taiwan (''MStar''); Qisda Corporation of Taoyuan, Taiwan and Qisda America Corporation of Irvine, California (collectively, ''Qisda''); BenQ Corporation of Taipei, Taiwan, BenQ America Corporation of Irvine, California, and BenQ Latin America Corporation of Miami, Florida (collectively ''BenQ''); Realtek Semicondustor Corp. of Hsinchu, Taiwan (''Realtek''); and AU Optronics Corp. of Hsinchu, Taiwan and AU Optronics Corp. America of Houston, Texas (collectively ''AUO'').

On January 12, 2012, the ALJ issued the subject ID finding a violation of Section 337 with respect to the '674 patent. The ALJ found that the CMI accused products including the Type 2 Array Circuitry and any Qisda or BenQ accused products incorporating these CMI accused products infringe the

asserted claims of the '674 patent. The ALJ found that no other accused products infringe the '674 patent. The ALJ also found that no accused products infringe the asserted claims of the '063 patent, the '006 patent, the '556 patent, or the '941 patent. The ALJ also found that claims 1, 2, 3, 4, 8, 11, 12, 14, and 18 of the '063 patent are invalid for obviousness under 35 U.S.C. 103, and that claims 4 and 14 of the '006 patent are invalid as anticipated under 35 U.S.C. 102. The ALJ further found that claim 17 of the '063 patent, claim 7 of the '006 patent, and the asserted claims of the '556 patent, the '674 patent, and the '941 patent are not invalid. The ALJ concluded that a domestic industry exists in the United States that exploits the asserted patents as required by 19 U.S.C. 1337(a)(2). On January 25, 2011, Thomson, CMI, MStar, Realtek, and AUO each filed a petition for review of the ID. BenQ and Qisda filed a joint petition for review incorporating the other respondents' arguments by reference.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to review (1) claim construction of the limitation ''layer'' of the asserted claims of the '006 patent; (2) infringement of the asserted claims of the '006 patent; (3) anticipation of claims 4 and 7 of the '006 patent by Scheuble; (4) the claim construction of the limitations ''mechanically rubbing''/''mechanically rubbed,'' ''a plurality of spacing elements,'' and ''an affixing layer'' of the asserted claims of the '063 patent; (5) infringement of the asserted claims of the '063 patent; (6) obviousness of the asserted claims of the '063 patent in view of Sugata and Tsuboyama; (7) whether Lowe and Miyazaki are prior art to the asserted claims of the '063 patent; (8) anticipation of the asserted claims of the '063 patent by Lowe; (9) anticipation of the asserted claims of the '063 patent by Miyazaki; (10) obviousness of the asserted claim of the '556 patent in view of Takizawa and Possin; (11) anticipation and obviousness of the asserted claims of the '674 patent in view of Fujitsu; (12) claim construction of the ''second rate'' ''determined by'' limitation of the asserted claims of the '941 patent and the ''input video signal'' limitation of claim 4 of the '941 patent; (13) infringement of the asserted claims of the '941 patent; (14) anticipation of the asserted claims of the '941 patent by Baba; (15) exclusion of evidence of the ViewFrame II+2 LCD Panel; and (16) economic prong of the domestic industry requirement.

The Commission has also determined to review and to take no position on the claim construction of the terms ''drain electrodes'' and ''source electrodes'' of the '556 patent.

The parties should brief their positions on the issues on review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

Question 1: The ALJ construed the term ''a plurality of spacing elements'' of claims 1 and 11 of the '063 patent as ''two or more structures, not physically connected to one another, which structures serve to substantially uniformly separate two substrates, said structures formed on one of said two substrates and contacting the second substrate.'' ID at 43. Does the proper construction require that the ''spacing elements'' contact the ''second substrate?'' Does certain language from claim 1 (''the two substrates remaining substantially uniformly separated from each other by said spacing elements'') and from claim 11 (''said second substrate being kept at a substantially uniform distance from said first substrate by said spacing elements'') require that the spacing elements physically separate the two substrates? Please cite to evidence in the record showing the understanding of person of ordinary skill in the art at the time of the '063 patent invention.

Question 2: The ALJ construed ''an affixing layer'' of claim 1 of the '063 patent as ''a stratum of material that attaches the spacing elements to a substrate, and which is separate and distinct from said spacing elements.'' ID at 34. Is this construction supported by the intrinsic evidence? In particular, does the preferred embodiment of the '063 patent specification disclose forming spacers directly from the affixing layer?

Question 3: The ALJ construed the term ''a plurality of spacing elements separate from one another'' as ''two or more structures, not physically connected to one another, which structures serve to substantially uniformly separate two substrates, said structures formed on one of said two substrates and contacting the second substrate.'' ID at 43. Do the main photospacers in the accused CMI modules meet the limitation under the ALJ's construction? Please cite to the evidence in the record.

Question 4: With respect to the '063 patent, the ALJ stated in the ID that [[ ]] ID at 334. He also stated that [[*Id.* Are these accurate statements? Please provide citations to the record as support. In addition, please identify [[ ]].

Question 5: At the time of the invention of the '063 patent, would it have been obvious to combine the teachings of Sugata and Tsuboyama, such that the substrate on which the spacers are formed in Sugata would be rubbed *after* the spacers are formed? Is the combination of the teachings of Sugata and Tsuboyama a combination of known elements that yield predictable results? Are there any secondary considerations such as commercial success that would be probative of non-obviousness? Please cite evidence in the record as support.

Question 6: Has Thomson produced sufficient independent corroborating evidence showing that the inventions of each of the asserted claims of the '063 patent have been reduced to practice before the filing dates of Lowe and Miyazaki? In particular, please discuss whether the evidence shows that display cells embodying the inventions have been tested and shown to work for their intended purposes.

Question 7: Does the intrinsic evidence support the construction of the term ''plate'' recited in claim 3 of the '006 patent to require a solid and not liquid material? ID at 220. Can the term ''plate'' include a liquid compensation layer sealed between two glass substrates? *See* CMI Petition at 31. Please cite to the evidence of the record as support. Under the proper construction of the term ''plate,'' does Scheuble anticipate claims 4 and 7 of the '006 patent?

Question 8: With respect to infringement of the asserted claims of the '006 patent, what is an acceptable range of variance in the measurement of n2 and n3, given the probability of errors in any real-world measurement of the index of refraction? What are the values and measurement errors of n2 and n3 for the entire layer in the accused devices? How close does the real-world measurement of n2 have to be compared to n3 for the layer to be considered ''uniaxial'' as construed by the ALJ? How close would n2 have to be to n3 for the layer to be equivalent to a ''uniaxial'' layer under the ALJ's construction? Please limit your response to the evidence in the record.

Question 9: Would a person of ordinary skill in the art be motivated to modify Takizawa to use only one mask to form the plurality of etch stoppers recited in claim 3 of the '556 patent? Does Takizawa teach away from using a single mask to form the plurality of etch stoppers? Please cite to the evidence in the record. Please discuss any Federal Circuit case law regarding obviousness of a patent claim that requires a single structure or process, in light of prior art that discloses one or more such structures or processes.

Question 10: What is the proper construction of the limitation ''a second rate'' ''determined by'' of the asserted claims of the '941 patent? Please provide all relevant intrinsic and extrinsic evidence of record, including expert testimony.

Question 11: Do the respondents' accused products infringe claims 1 and 4 of the '941 patent under Thomson's construction of ''determined by.'' Please cite any record evidence, including expert testimony, to support your response.

Question 12: Discuss any Federal Circuit case law relevant to whether or not claim 4 of the '941 patent requires an input video signal for a finding of infringement. Please discuss any basis, other than the language of the claims, (*e.g.,* prosecution history) that provides guidance on whether or not claim 4 requires an input video signal.

Question 13: For claims 1 and 4 of the '941 patent, what is the proper construction of the term ''za'' in the ratio ft/za ''required for a

cathode ray tube.'' For an interlaced signal associated with a CRT display, does za refer to the number of lines updated in a given field period? Please cite to the intrinsic evidence of the '941 patent as support.

Question 14: Is Mr. Vogeley's testimony regarding the prior art status of the ViewFrame II+2 with respect to the '941 patent sufficiently corroborated under a ''rule of reason'' analysis? Assuming that the ViewFrame II+2 is prior art to the asserted claims of the '941 patent, does the ViewFrame II+2 anticipate each of the asserted claims? Please cite to the evidence in the record.

Question 15: With respect to respondents' arguments that Thomson's investments in licensing its LCD patent portfolio cannot be completely allocated to the asserted patents, what portion of the investments should be allocated to the asserted patents? Please provide the legal and factual basis for such allocations.

Question 16: Based on the factors outlined below, please discuss the legal and factual bases for your position as to whether Thomson's investment in licensing for the asserted patents is substantial. Please consider at least the following factors: (1) The industry and size and scope of complainant's operations; (2) the existence of other types of ''exploitation'' of the asserted patents such as research, development, or engineering; (3) the existence of license-related ancillary activities such as ensuring compliance with the license agreement and providing training or technical support to its licensees; (4) whether complainant's licensing activities are continuing; (5) whether complainant's licensing activities are those referenced favorably in the legislative history of section 337(1)(3)(C); (6) complainant's return on investment; and (7) the extent to which complainant's LCD portfolio licenses are worldwide licenses.

Question 17: What should the Commission compare complainants' investments to in analyzing whether the complainants' investments are substantial? Please cite any relevant legal basis and evidence of record to support your position.

Question 18: Should Thomson's expenses related to the acquisition of the Xerox patent portfolio be [[ ]]? Is the purchase of a patent considered an exploitation of that patent under section 337(a)(3)(C)? Can investments in [[ ]] for purposes of establishing domestic industry under section 337(a)(3)(C)? With respect to any argument that the Commission should [[ ]]? Further, how should the [[ ]]? Please provide legal and factual support for your position.

Question 19: Should the Commission consider litigation expenses for the particular Section 337 investigation at issue? Should the Commission consider litigation expenses for parallel district court actions? Should it matter if the district court actions are stayed or ongoing?

Question 20: Should the Commission consider reexamination expenses when determining if a domestic industry exists and if so should they be treated in the same manner as litigation expenses in determining whether or not the expenses are investments in licensing?

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 a respondent 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 Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 9 (December 1994).

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 United States 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: The parties to the investigation are requested to file written submissions on the issues identified in this notice. 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 is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patent expires and the HTSUS subheadings under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Monday, April 9, 2012. Reply submissions must be filed no later than the close of business on Monday, April 16, 2012. The written submissions must be no longer than 75 pages and the reply submissions must be no longer than 35 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 CFR 210.4(f), which requires electronic filing. The original document and 8 true copies thereof must also be filed 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 non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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).

By order of the Commission.

Issued: March 26, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–7628 Filed 4–2–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the Federal Government and 29 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from state and federal agencies to serve on the Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system for noncriminal justice purposes.

Matters for discussion are expected to include:

(1) Rap Back.

(2) Guiding principle documents outlining privacy rights for agencies and applicants use during fingerprint-based background checks.

(3) The National Background Check System Task Force recommendation on potential reimbursable arrangements for National Fingerprint File participants.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Council or wishing to address this session of the Council should notify the Federal Bureau of Investigation (FBI) Compact Officer, Mr. Gary S. Barron at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation. Requesters will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Council will meet in open session from 9 a.m. until 5 p.m., on May 16–17, 2012.

ADDRESSES: The meeting will take place at The St. Anthony Hotel, 330 East Terrace, San Antonio, Texas, telephone (210) 227–4392.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Gary S. Barron, FBI Compact Officer, Module D3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone (304) 625–2803, facsimile (304) 625–2868.

Dated: March 27, 2012.

Gary S. Barron,

FBI Compact Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2012–7999 Filed 4–2–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI).

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System/Next Generation Identification, Interstate Identification Index, Law Enforcement Online, National Crime Information Center, National Instant Criminal Background Check System, National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first come, first seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division's programs or wishing to address this session should notify the CJIS Designated Federal Officer, R. Scott Trent at (304) 625–5263 at least 72 hours prior to the start of the session. The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

Dates and Times: The APB will meet in open session from 8:30 a.m. until 5 p.m., on June 6–7, 2012.

ADDRESSES: The meeting will take place at The Adams Mark Hotel, 120 Church Street, Buffalo, New York 14202, telephone (614) 228–5050.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Melody D. Cooper; Management and Program Assistant; CJIS Training and Advisory Process Unit, Resources Management Section; FBI CJIS Division, Module C2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149; telephone (304) 625–2601, facsimile (304) 625–5090.

Dated: March 27, 2012.

R. Scott Trent,

CJIS Designated Federal Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2012–8001 Filed 4–2–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Notice of Final Determination Revising the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of final determination.

SUMMARY: This final determination revises the list required by Executive Order 13126 (''Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor''), in accordance with the ''Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Under 48 CFR Subpart 22.15 and E.O. 13126.'' This notice revises the list by adding three products, Bricks from Afghanistan and Cassiterite and Coltan from the Democratic Republic of the Congo, that the Departments of Labor, State and Homeland Security believe might have been mined, produced, or manufactured by forced or indentured child labor. Under a final rule of the Federal Acquisition Regulatory Councils, published January 18, 2001 (at 48 CFR Subpart 22.15), which also implements Executive Order 13126, federal contractors who supply products which

appear on this list are required to certify, among other things, that they have made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture the item.

DATES: This document is effective immediately upon publication of this notice.

SUPPLEMENTARY INFORMATION:

I. Revised List of Products

On October 4, 2011, the Department of Labor (DOL), in consultation and cooperation with the Department of State (DOS) and the Department of Homeland Security (DHS), published a Notice of Initial Determination in the **Federal Register** proposing to revise the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (''the EO List'') (76 FR 61384). The notice invited public comment through December 3, 2011. The initial determination can be accessed on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm* or can be obtained from: Office of Child Labor, Forced Labor, and Human Trafficking (OCFT), Bureau of International Labor Affairs, Room S–5317, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–4843; fax (202) 693–4830.

Of the public comments that were received, only one discussed the revisions to the EO List proposed in the initial determination. The comment expressed support for all three proposed revisions to the EO List. No new information was provided through public comments to negate the basis for the proposed revisions in the initial determination.

Accordingly, based on recent, credible, and appropriately corroborated information from various sources, DOL, DOS, and DHS have concluded that there is a reasonable basis to believe that the following products, identified by their countries of origin, might have been mined, produced, or manufactured by forced or indentured child labor:

Product	Country
Bricks	Afghanistan.
Cassiterite	Democratic Republic of the Congo.
Coltan	Democratic Republic of the Congo.

The bibliographies providing the basis for the three agencies' decisions on each product are available on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm*.

II. Background

EO 13126, which was published in the **Federal Register** on June 16, 1999 (64 FR 32383), declared that it was ''the policy of the United States Government * * * that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of good, wares, articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor.'' Pursuant to EO 13126, and following public notice and comment, DOL published in the January 18, 2001 **Federal Register** a list of products, identified by their country of origin, that DOL, in consultation and cooperation with DOS and the Department of the Treasury [relevant responsibilities now within DHS] had a reasonable basis to believe might have been mined, produced or manufactured by forced or indentured child labor (66 FR 5353).

Pursuant to Section 3 of EO 13126, the Federal Acquisition Regulatory Councils published a final rule in the **Federal Register** on January 18, 2001 providing, amongst other requirements, that federal contractors who supply products that appear on the EO List published by DOL must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. *See* 48 CFR Subpart 22.15.

DOL also published on January 18, 2001 ''Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor'' (''Procedural Guidelines''), which provide for maintaining, reviewing, and, as appropriate, revising the EO List (66 FR 5351). The Procedural Guidelines provide that the List may be revised either through consideration of submissions by individuals or on DOL's own initiative. In either event, when proposing to revise the EO List, DOL must publish in the **Federal Register** a notice of initial determination, which includes any proposed alteration to the List. DOL will consider all public comments prior to the publication of a final determination of a revised list, which is made in consultation and cooperation with DOS and DHS.

On September 11, 2009, DOL published an initial determination in the **Federal Register** proposing to revise the List to include 29 products from 21 countries. (74 FR 46794). The Notice requested public comments for a period of 90 days. Public comments were received and reviewed by all relevant agencies, and a final determination was issued on July 20, 2010 that included all products proposed in the initial determination except for carpets from India. (75 FR 42164).

On December 16, 2010, DOL, in consultation and cooperation with DOS and DHS, published an initial determination in the **Federal Register** proposing to revise the EO List (75 FR 78755). The notice explained how the initial determination was made and invited public comment through February 15, 2011. Public comments were received and reviewed by all relevant agencies, and a final determination was issued on May 31, 2011 that incorporated all revisions proposed in the initial determination. (76 FR 31365).

III. Summary and Discussion of Significant Comments

The Bureau of International Labor Affairs (ILAB) received 4,151 public comments. Of these, 4,141 were identical comments from members of the public sent as part of an email campaign. Three of the remaining comments were from the Apparel Export Promotion Council of India (AEPC); the Child Labor Coalition (CLC); and a group of organizations including the American Federation of Labor-Congress of International Organizations (AFL–CIO), the American Federation of Teachers, Cal Poly Chocolates, the CLC, the Center for Reflection, Education and Action, Ethix Ventures, Equal Exchange, the Fair Trade Federation, the Fair Trade Resource Network, the Fair World Project, Global Exchange, Green America, the International Labor Rights Forum (ILRF), the Labor-Religion Coalition of New York State, Media Fair Trade/Untours, the Organic Consumers Association, Presbyterian Church (USA), the Office of Public Witness, Project Hope and Fairness, Stop the Traffik, SweatFree Communities, Sweet Earth Organic Chocolates, the Unitarian Universalist Service Committee, the United Methodist Board of Church and Society, and United Students for Fair Trade. The remaining seven comments had been mistakenly sent to ILAB and were actually intended to respond to an unrelated DOL Notice of Proposed Rulemaking; ILAB forwarded these

comments to the appropriate DOL agency.

All submissions, including a sample of the identical emails, are available for public viewing at *www.regulations.gov* (reference Docket ID No. DOL–2011–0006). After the closure of the public comment period, ILAB met with the AEPC at its request, and a record of that meeting is also available for public viewing under the same docket.

All comments have been carefully reviewed and considered, as discussed below.

A. Comments on Forced Child Labor in the Production of Cotton in Uzbekistan and Cocoa in Cote d'Ivoire

One commenter provided recent documentation on forced child labor in the production of cotton in Uzbekistan and cocoa in Cote d'Ivoire, both of which are currently included in the EO List. DOL appreciates receiving this documentation.

B. Comments on Alleged Forced Child Labor in the Harvesting and Processing of Cottonseed From Uzbekistan

One commenter stated that forced child labor is occurring in the harvesting and processing of cottonseed from Uzbekistan. DOL would appreciate receiving documentation that may provide further information about this issue.

C. Comments on Alleged Forced Child Labor in the Production of Carpets in India

One commenter noted that carpets from India had ''disappeared'' from the EO List, and recommended that they be added to the List. DOL wishes to clarify that although carpets from India were included in an Initial Determination released to the public on September 11, 2009 (74 FR 46794), this product and country of origin were not included on the EO List in the Final Determination published on July 20, 2010 (75 FR 42164). At that time, available information about forced child labor in carpets was determined to be insufficient to place the product on the List. However, DOL appreciates the additional information provided by this commenter. DOL is considering this information and conducting additional relevant research.

D. Request That Garments and Embroidered Textiles (Zari) From India Be Removed From the EO List

One commenter requested the deletion of Embroidered Textiles (Zari) and Garments from India from the EO List. DOL is carefully reviewing this request and conducting additional research. DOL has received substantial additional information on the production of these goods and continues to analyze all available information against the criteria established in its Procedural Guidelines. DOL will consider all available information for the purpose of future revisions to the list.

E. Comments Related to the Trafficking Victims Protection Reauthorization Act List of Goods Made With Child Labor or Forced Labor (TVPRA List)

One commenter included information that addressed goods named on the list of products DOL maintains under the Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA), codified at 22 U.S.C. 7112(b)(2)(C). DOL would like to clarify that the EO List and the TVPRA List are produced under separate mandates and the public comment period identified for submissions relevant to the EO List initial determination did not apply to the TVPRA List. EO 13126 limitations on Federal procurement apply only to the products on the EO List, not to those on the TVPRA List. DOL considered all information received during the EO List public comment period addressing goods named on the TVPRA List as an official TVPRA List submission and will consider that information in the ongoing process of updating the TVPRA List. Additional information on the TVPRA List can be found at *http://www.dol.gov/ILAB/programs/ocft/tvpra.htm*.

Because some products appear on both the TVPRA List and the EO List, one commenter suggested that the separate standards for inclusion on these Lists are being improperly applied. This commenter also argued that the standard for inclusion on the EO List is impermissibly vague and may ''lead to chaos.'' The EO List includes products that DOL, in consultation with DOS and DHS, has ''a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor.'' Sec. 2. DOL, DOS, and DHS (formerly the Department of the Treasury) have administered the EO List for more than a decade. In this time period, there has been no indication that the EO definitions have caused confusion in discerning appropriate country and products. Products are placed on the EO List only after careful consideration of the factors set forth in the Procedural Guidelines, namely ''the nature of information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of the information by appropriate sources; whether the information involved more than an insolated incident; and whether recent and credible efforts are being made to address forced or indentured child labor in a particular industry.'' (66 FR 5351).

The TVPRA List includes goods that ILAB ''has reason to believe are produced by forced labor or child labor in violation of international standards.'' 22 U.S.C. 7112(b)(2)(C). As there is a reasonableness standard for inclusion on both the EO and TVPRA Lists, and DOL considers similar published factors in determining which goods appear on the Lists, it is not surprising that a number of products appear on both Lists. (66 FR 5351; 72 FR 73374).

F. Comment Questioning Whether the List Is in Accord With International Law

One commenter expressed concerns about whether the EO is consistent with international law, including the General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A–11, T.I.A.S. 1700, 55 U.N.T.S. 194 (''GATT'').

This comment raised concerns that (1) the EO List improperly acts as a ''non-tariff barrier'' to trade and (2) the EO should not exclude from its provisions the products of a party to the North American Free Trade Agreement or the Agreement on Government Procurement without excluding all parties to the GATT. This comment appears to misunderstand the EO List, which does not act to restrict the importation of goods. The listing of products, and their respective countries of origin, and the requirement for procurement purposes of a good faith certification that products appearing on the EO List were not mined, produced or manufactured with forced or indentured child labor, does not constitute a barrier to trade. The commenter's argument that the exclusions referenced are inconsistent with the non-discrimination obligations in the GATT is directed at the EO itself, rather than its implementation, and thus may not be responsive to the Department's request for comments. However, the exclusions referenced by the commenter are not inconsistent with these obligations.

This commenter also suggested that it is improper to define ''child'' under the EO as any person under the age of 18. See EO 13126, Sec. 6(c). This definition is in accordance with international law, and particularly International Labour Organization Convention 182, Worst Forms of Child Labour. Convention 182 defines ''child'' as ''all persons under the age of 18.'' Art. 2. The Convention goes on to define the worst forms of child labor to include ''all forms of slavery or practices similar to slavery,

such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.'' Art. 3(a). Accordingly, the worst forms of child labor under Convention 182 necessarily encompass the EO definition of forced or indentured child labor, which includes ''all work or service: (1) Extracted from any person under the age of 18 under the menace of any penalty for its non-performance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.'' EO 13126, Sec. 6(c). Therefore, the commenter's suggestion is based on an incorrect understanding of the definition under international law.

G. Comments Related to the Stage of Production at Which Forced or Indentured Child Labor Might Have Been Used

Comments were received suggesting that the EO List be expanded to include ''end products'' if there is a reasonable basis to believe the component parts of those products might have been mined, produced, or manufactured by forced or indentured child labor, regardless of the stage in the supply chain at which there is reason to believe such child labor might have been used. DOL is considering these comments and will consult and coordinate as appropriate with DOS, DHS and other Federal agencies.

H. Comments Related to the Procurement of Products Named on the List

Comments were received requesting that federal contracting officers use the U.S. Department of Agriculture (USDA) Guidelines for Eliminating Child and Forced Labor in Agricultural Supply Chains (''USDA Guidelines''), set forth at 76 FR 20305, to evaluate whether a contractor has made a good faith effort to verify that forced or indentured child labor was not used to mine, produce, or manufacture any item on the EO List. The USDA Guidelines were published on April 12, 2011 under the Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651 (2008), and Section 105 of the TVPRA as a ''voluntary initiative to enable entities to reduce the likelihood that agricultural products or commodities imported into the United States are produced by forced labor or child labor.'' (76 FR 20305). These guidelines, however, are not intended to be used by the government for enforcement purposes. Further, the current General Services Administration (GSA) regulations applicable to procurements affected by the EO do not permit good faith to be evaluated in the manner suggested. The GSA regulations state that ''[a]bsent any actual knowledge that the [good faith] certification is false, the contracting officer must rely on the offerors' certifications in making award decisions.'' 48 CFR 22.1503(d).

Signed at Washington, DC, this 29th day of March 2012.

Sandra Polaski,

Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. 2012–7961 Filed 4–2–12; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Labor Advisory Committee for Trade Negotiations and Trade Policy

ACTION: Meeting Notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiation and Trade Policy.

Date, Time, Place: May 14, 2012; 2 p.m.–4 p.m.; U.S. Department of Labor, Secretary's Conference Room, 200 Constitution Ave. NW., Washington, DC.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Anne Zollner, Division Chief, Trade Policy and Negotiations, Office of Trade and Labor Affairs; Phone: (202) 693–4890.

Signed at Washington, DC, the 28th day of March 2012.

Sandra Polaski,

Deputy Undersecretary, International Affairs.

[FR Doc. 2012–7965 Filed 4–2–12; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of the Federal Register

Agreements in Force as of December 31, 2011, Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States

AGENCY: Office of the Federal Register, NARA.

ACTION: Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Taipei Economic and Cultural Representative Office in the United States (formerly the Coordination Council for North American Affairs) in order to maintain cultural, commercial and other unofficial relations between the American people and the people of Taiwan. The Director of the Federal Register is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people of Taiwan are maintained on a non-governmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96–8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) was established as the nongovernmental Taiwan counterpart to AIT. On October 10, 1995, the CCNAA was renamed the Taipei Economic and Cultural Representative Office in the United States (TECRO).

Under section 12 of the Act, agreements concluded between AIT and TECRO (CCNAA) are transmitted to the Congress, and according to sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States. The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, Suite 1700, Arlington, Virginia, 22209. For further information, please telephone (703) 525–8474, or fax (703) 841–1385.

Following is a list of agreements between AIT and TECRO (CCNAA) which were in force as of December 31, 2011.

For the American Institute in Taiwan.

Dated: March 26, 2012.

Barbara J. Schrage,

Managing Director.

For the Office of the Federal Register.
Dated: March 28, 2012.

Michael L. White,

Acting Director.

Agreements Between American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) in Force as of December 31, 2011

Status of TECRO

The Exchange of Letters concerning the change in the name of the Coordination Council for North American Affairs (CCNAA) to the Taipei Economic and Cultural Representative Office in the United States (TECRO). Signed December 27, 1994 and January 3, 1995. Entered into force January 3, 1995.

Agriculture

1. Guidelines for a cooperative program in the agriculture sciences. Signed January 28, 1986. Entered into force January 28, 1986.
2. Amendment amending the 1986 guidelines for a cooperative program in the agricultural sciences. Effected by exchange of letters September 11, 1989. Entered into force September 11, 1989.
3. Cooperative service agreement to facilitate fruit and vegetable inspection through their designated representatives, the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and the Taiwan Provincial Fruit Marketing Cooperative (TPFMC) supervised by the Taiwan Council of Agriculture (COA). Signed April 28, 1993. Entered into force April 28, 1993.
4. Memorandum of agreement concerning sanitary/phytosanitary and agricultural standards. Signed November 4, 1993. Entered into force November 4, 1993.
5. Agreement amending the guidelines for the cooperative program in agricultural sciences. Signed October 30, 2001. Entered into force October 30, 2001.
6. Memorandum of Understanding Establishing Consultative Committee on Agriculture Terms of Reference. Signed July 10, 2007. Entered into force July 10, 2007.
7. Consultative Committee on Agriculture Terms of Reference. Signed July 10, 2007. Entered into force July 10, 2007.
8. Notification on Protocol of Bovine Spongiform Encephalopathy (BSE)—related measures for the importation of beef and beef products for human consumption from territory of the authorities represented by AIT. Signed October 22, 2009. Entered into force October 22, 2009.

Aviation

1. Memorandum of agreement concerning the arrangement for certain aeronautical equipment and services relating to civil aviation (NAT–I–845), with annexes. Signed September 24 and October 23, 1981. Entered into force October 23, 1981.
2. Amendment amending the memorandum of agreement concerning aeronautical equipment and services of September 24 and October 23, 1981. Signed September 1 and 23, 1985. Entered into force September 3, 1985.
3. Agreement amending the memorandum of agreement of September 24 and October 23, 1981, concerning aeronautical equipment and services. Signed September 23 and October 17, 1991. Entered into force October 17, 1991.
4. Air transport agreement, with annexes. Signed at Washington March 18, 1998. Entered into force March 18, 1998.
5. Agreement for promotion of aviation safety. Signed June 30, 2003. Entered into force June 30, 2003.
6. Exchange of Letters concerning removal from the agreement of provisions relating to regulations of computer reservation systems in Annex III to the Air Transport Agreement signed March 18, 1998. Signed December 11, 2006 and January 2, 2007. Entered into force January 2, 2007.
7. Exchange of Letters on Principles for Cooperation on Improving Travel Security. Signed December 19, 2008. Enter into force December 19, 2008.
8. Agreement for Cooperation in and the promotion of Transportation of Safety. Signed June 15, 2010 and June 22, 2010. Entered into force June 22, 2010.

Conservation

1. Memorandum on cooperation in forestry and natural resources conservation. Signed May 23 and July 4, 1991. Entered into force July 4, 1991.
2. Memorandum on cooperation in soil and water conservation under the guidelines for a cooperative program in the agricultural sciences. Signed at Washington October 5, 1992. Entered into force October 5, 1992.
3. Agreement on technical cooperation in forest management and nature conservation. Signed October 24, 2003 and February 27, 2004. Entered into force February 27, 2004.
4. Memorandum of Understanding Concerning Cooperation in Fisheries and Aquaculture. Signed April 21, 2008. Entered into force April 21, 2008

Consular

1. Agreement regarding passport validity. Effected by exchange of letters of August 26 and November 13, 1998. Entered into force December 10, 1998.

Consumer Product Safety

1. Memorandum of Understanding for cooperation associated with consumer product safety matters. Signed April 29 and July 27, 2004. Entered into force July 27, 2004.

Customs

1. Agreement for technical assistance in customs operations and management, with attachment. Signed May 14 and June 4, 1991. Entered into force June 4, 1991.
2. Agreement on TECRO/AIT carnet for the temporary admission of goods. Signed June 25, 1996. Entered into force June 25, 1996.
3. Agreement regarding mutual assistance between their designated representatives, the United States Customs Administration and the Taiwan Customs Administration. Signed January 17, 2001. Entered into force January 17, 2001.

Drug Enforcement

1. Memorandum of Understanding Concerning the Sharing of Information in Relation to Preventing Combating Breach of Customs and Controlled Substances Laws. Signed February 10, 2009. Entered into force February 10, 2009.

Education and Culture

1. Agreement amending the agreement for financing certain educational and cultural exchange programs of April 23, 1964. Effected by exchange of letters at Taipei April 14 and June 4, 1979. Entered into force June 4, 1979.
2. Agreement concerning the Taipei American School, with annex. Signed at Taipei February 3, 1983. Entered into force February 3, 1983.
3. Memorandum of Understanding on Educational Cooperation. Signed at Washington, DC December 5, 2008. Entered into force December 5, 2008.
4. Exchange of letters concerning the Foundation for Scholarly Exchange pursuant to the Agreement for financing certain educational and cultural exchange programs. Signed December 4, 2009 and April 15, 2010. Entered into force April 15, 2010.

Energy

1. Agreement relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed at Taipei October 3, 1984. Entered into force October 3, 1984.

2. Agreement amending and extending the agreement of October 3, 1984, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 19, 1989. Entered into force October 19, 1989.

3. Agreement abandoning in place in Taiwan the Argonaut Research Reactor loaned to National Tsing Hua University. Signed November 28, 1990.

4. Agreement Amending and Extending the Agreement of October 3, 1984, as amended and extended, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 3, 1994. Entered into force October 3, 1994.

5. Agreement concerning safeguards arrangements for nuclear materials transferred from France to Taiwan. Effected by exchange of letters February 12 and May 13, 1993. Entered into force May 13, 1993.

6. Memorandum of Agreement for release of an Energy and Power Evaluation Program (ENPEP) computer software package. Signed January 25 and February 27, 1995. Entered into force February 27, 1995.

7. Agreement regarding terms and conditions for the acceptance of foreign research reactor spent nuclear fuel at the Department of Energy's Savannah River site. Signed December 28, 1998 and February 25, 1999. Entered into force February 25, 1999.

8. Agreement for technical cooperation in clean coal and advanced power systems technologies. Signed October 31, 2003 and January 20, 2004. Entered into force January 20, 2004.

9. Modification Number 1 to the Agreement for the Shipment of Spent Nuclear Fuel. Signed July 8, 2009. Entered into force July 8, 2009.

10. Arrangement for the Exchange of Technical Information and Cooperation in Nuclear Regulatory and Safety Matters. Signed January 4, 2011 and January 4, 2011. Entered into force January 4, 2011.

11. Statement of Intent regarding Nuclear and Radiological Incident Response and Emergency Management Capabilities. Signed May 9, 2011 and May 26, 2011. Entered into force May 26, 2011.

12. Joint Determination of Safeguardability for Alteration in Form or Content of Irradiated Fuel elements. Signed June 20, 2011 and June 20, 2011. Entered into force June 20, 2011.

Environment

1. Agreement for technical cooperation in the field of environmental protection, with implementing arrangement. Signed June 21, 1993. Entered into force June 21, 1993.

2. Agreement extending the agreement of June 21, 1993 for technical cooperation in the field of environmental protection. Effected by exchanges of letters June 30 and July 20 and 30, 1998. Entered into force July 30, 1998, effective June 21, 1998.

3. Agreement extending the agreement for technical cooperation in the field of environmental protection. Signed September 23, 2003. Entered into force September 23, 2003.

4. Extension of Agreement for the Technical Cooperation in the Field of Environmental Protection. Signed September 29, 2008. Entered into force September 29, 2008.

5. Letter of confirmation of compatible Good Laboratory Practices programs. Signed January 19, 2010 and February 3, 2010. Entered into force February 3, 2010.

Health

1. Guidelines for a cooperative program in the biomedical sciences. Signed May 21, 1984. Entered into force May 21, 1984.

2. Guidelines for a cooperative program in food hygiene. Signed January 15 and 28, 1985. Entered into force January 28, 1985.

3. Agreement amending the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed April 20, 1989. Entered into force April 20, 1989.

4. Agreement amending the 1984 guidelines for a cooperative program in the biomedical Sciences, as amended, with attachment. Signed August 24, 1989. Entered into force August 24, 1989.

5. Guidelines for a cooperative program in public health and preventive medicine. Signed at Arlington and Washington June 30 and July 19, 1994. Entered into force July 19, 1994.

6. Agreement for technical cooperation in vaccine and immunization-related activities, with implementing arrangement. Signed at Washington October 6 and 7, 1994. Entered into force October 7, 1994.

7. Agreement regarding the mutual exchange of information on medical devices, including quality systems requirements inspectional information. Effected by exchange of letters January 9, 1998. Entered into force January 9, 1998.

Homeland Security

1. Declaration of Principles for governing cooperation, on the basis of reciprocity, including the posting of AIT Representatives at the Port of Kaohsiung, and the posting of TECRO Representatives at certain U.S. seaports. Signed August 18, 2004 and August 18, 2004. Entered into force August 18, 2004.

2. Memorandum of understanding concerning cooperation to prevent the illicit trafficking in nuclear and other radioactive material. Signed May 25, 2006 and May 25, 2006. Entered into force May 25, 2006.

3. Declaration of Principles for governing cooperation, on the basis of reciprocity, including the posting of AIT Representatives at seaports in Taiwan. Signed September 22, 2006 and September 22, 2006. Entered into force September 22, 2006.

4. Exchange of Letters to facilitate the implementation of the MOU concerning cooperation to prevent the illicit trafficking in nuclear and other radioactive material signed May 25, 2006. Signed April 30, 2007 and July 5, 2007. Entered into force July 5, 2007.

5. Port Air Quality Partnership Declaration on the occasion of a Port Air Quality Partnership Conference hosted by their designated representatives, the Port of Tacoma, Washington and the Harbor Bureaus of Kaosiung, Taipei and Keelung on November 18–20, 2008. Signed November 20, 2008. Entered into force November 20, 2008.

6. Agreement for Transfer of Ownership. Signed September 30, 2009. Entered into force September 30, 2009.

Intellectual Property

1. Agreement concerning the protection and enforcement of rights in audiovisual works. Effected by exchange of letters at Arlington and Washington June 6 and 27, 1989. Entered into force June 27, 1989.

2. Understanding concerning the protection of intellectual property rights. Signed at Washington June 5, 1992. Entered into force June 5, 1992.

3. Agreement for the protection of copyrights, with appendix. Signed July 16, 1993. Entered into force July 16, 1993.

4. Memorandum of understanding regarding the extension of priority filing rights for patent and trademark applications. Signed April 10, 1996. Entered into force April 10, 1996.

Judicial Assistance

1. Memorandum of understanding on cooperation in the field of criminal investigations and prosecutions. Signed

at Taipei October 5, 1992. Entered into force October 5, 1992.

2. Agreement on mutual legal assistance in criminal matters. Signed March 26, 2002. Entered into force March 26, 2002.

Labor

1. Guidelines for a cooperative program in labor affairs. Signed December 6, 1991. Entered into force December 6, 1991.

2. Agreement for a cooperative program in Labor Mediation and Alternative Dispute Resolution. Signed June 23, 2010 and July 7, 2010. Entered into force July 7, 2010.

Mapping

1. Agreement concerning mapping, charting, and geodesy cooperation. Signed November 28, 1995. Entered into force November 28, 1995.

2. Amendment one to the Agreement concerning mapping, charting, and geodesy cooperation. Signed December 1, 2009. Entered into force December 1, 2009.

Maritime

1. Agreement concerning mutual implementation of the 1974 Convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington August 17 and September 7, 1982. Entered into force September 7, 1982.

2. Agreement concerning mutual implementation of the 1969 international convention on tonnage measurement. Effected by exchange of letters at Arlington and Washington May 13 and 26, 1983. Entered into force May 26, 1983.

3. Agreement concerning mutual implementation of the protocol of 1978 relating to the 1974 international convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

4. Agreement concerning mutual implementation of the protocol of 1978 relating to the international convention for the prevention of pollution from ships, 1973. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

5. Agreement concerning mutual implementation of the 1966 international convention on load lines. Effected by exchange of letters at Arlington and Washington March 26 and April 10, 1985. Entered into force April 10, 1985.

6. Agreement concerning the operating environment for ocean carriers. Effected by exchange of letters at Washington and Arlington October 25 and 27, 1989. Entered into force October 27, 1989.

Military

1. Agreement for foreign military sales financing by the authorities on Taiwan. Signed January 4 and July 12, 1999. Entered into force July 12, 1999.

2. Letter of Agreement concerning exchange of research and development information. Signed August 4, 2004. Entered into force August 4, 2004.

3. Master Information Exchange Agreement Information Exchange Annex AF–05–TW–9301 concerning Nanoscience and Nanotechnology. Signed December 15, 2005. Entered into force December 15, 2005.

4. Information and communication technologies (ICT) forum terms of reference. Signed October 31, 2007. Entered into force October 31, 2007.

5. Memorandum of Agreement Concerning Research, Development, Test and Evaluation (RDT&E) Projects. Signed May 14, 2008. Entered into force May 14, 2008.

6. Arrangement Concerning the Exchange of Aeronautical Information. Signed January 27, 2009. Entered into force January 27, 2009.

7. Information Exchange Annex N–11–TW–6551 Master Information Exchange Letter of Agreement. Signed May 25, 2011 and May 25, 2011. Entered into force May 25, 2011.

Postal

1. Agreement concerning establishment of INTELPOST service. Effected by exchange of letters at Arlington and Washington April 19 and November 26, 1990. Entered into force November 26, 1990.

2. International business reply service agreement, with detailed regulations. Signed at Washington February 7, 1992. Entered into force February 7, 1992.

3. Agreement on the application of an EMS (express mail service) pay-for-performance plan. Signed March 5, 2004 and August 25, 2004. Entered into force January 1, 2005.

Privileges and Immunities

1. Agreement on privileges, exemptions and immunities, with addendum. Signed at Washington October 2, Entered into force October 2, 1980.

2. Agreement governing the use and disposal of vehicles imported by the American Institute in Taiwan and its personnel. Signed at Taipei April 21, 1986. Entered into force April 21, 1986.

Scientific & Technical Cooperation

1. Agreement on scientific cooperation. Effected by exchange of letters at Arlington and Washington on September 4, 1980. Entered into force September 4, 1980.

2. Agreement concerning renewal and extension of the 1980 agreement on scientific cooperation. Signed March 10, 1987. Entered into force March 10, 1987.

3. Guidelines for a cooperative program in atmospheric research. Signed May 4, 1987. Entered into force May 4, 1987.

4. Agreement for technical assistance in dam design and construction, with appendices. Signed August 24, 1987. Entered into force August 24, 1987.

5. Agreement for a cooperative program in the sale and exchange of technical, scientific, and engineering information. Signed November 17, 1987. Entered into force November 17, 1987.

6. Agreement extending the agreement of November 17, 1987, for a cooperative program in the sale and exchange of technical, scientific and engineering information. Signed August 8, 1990. Entered into force August 8, 1990.

7. Cooperative program on Hualien soil-structure interaction experiment. Signed September 28, 1990. Entered into force September 28, 1990.

8. Agreement for technical cooperation in geodetic research and use of advanced geodetic technology, with implementing arrangement. Signed January 11 and February 21, 1991. Entered into force February 21, 1991.

9. Agreement amending and extending the agreement of August 24, 1987, for technical assistance in dam design and construction. *Name changed to Agreement for Technical Assistance in Areas of Water Resource Development. Signed May 11 and June 9, 1992. Entered into force June 9, 1992.

10. Agreement for technical cooperation in seismology and earthquake monitoring systems development, with implementing arrangement. Signed July 22 and 24, 1992. Entered into force July 24, 1992.

11. Agreement amending the Agreement of August 24, 1987 for technical assistance in areas of water resource development. Signed August 30 and September 3, 1996. Entered into force September 3, 1996.

12. Agreement concerning joint studies on reservoir sedimentation and sluicing, including computer modeling. Signed February 14 and March 8, 1996. Entered into force March 8, 1996.

13. Guidelines for a cooperative program in physical sciences. Signed January 2 and 10, 1997. Entered into force January 10, 1997.

14. Agreement for scientific and technical cooperation in ocean climate research. Signed February 18, 1997. Entered into force February 18, 1997.

15. Agreement amending the agreement of August 24, 1987 for technical assistance in areas of water resource development. Signed October 14, 1997. Entered into force October 14, 1997.

16. Agreement for technical cooperation in scientific and weather technology systems support. Signed October 22 and November 5, 1997. Entered into force November 5, 1997.

17. Agreement for technical cooperation associated with establishment of advanced operational aviation weather systems. Signed February 10 and 13, 1998. Entered into force February 13, 1998.

18. Agreement for technical cooperation associated with development, launch and operation of a constellation observing system for meteorology, ionosphere and climate. Signed May 29 and June 30, 1999. Entered into force June 30, 1999.

19. Agreement for technical cooperation associated with establishment of advanced data assimilation and modeling systems. Signed December 20, 2004 and January 12, 2005. Entered into force January 12, 2005.

20. Agreement for cooperation in the micro pulse lidar network and the aerosol robotic network. Signed July 13, 2007 and April 17, 2007. Entered into force July 13, 2007.

21. Agreement for technical cooperation in meteorology and forecast systems development. Signed September 5, 2007 and June 25, 2007. Entered into force September 5, 2007.

22. Agreement for Cooperation in Astronomy and Astrophysics Research. Signed October 27, 2008. Entered into force October 27, 2008.

23. Agreement for Technical Cooperation associated with Development, Launch and Operation of a Constellation Observing System for Meteorology, Ionosphere and Climate Follow-on Mission. Signed May 10, 2010 and May 27, 2010. Entered into force May 27, 2010.

Security of Information

1. Protection of information agreement. Signed September 15, 1981. Entered into force September 15, 1981.

Taxation

1. Agreement concerning the reciprocal exemption from income tax of income derived from the international operation of ships and aircraft. Effected by exchange of letters at Taipei May 31, 1988. Entered into force May 31, 1988.

2. Agreement for technical assistance in tax administration, with appendices. Signed August 1, 1989. Entered into force August 1, 1989.

Trade

1. Agreement concerning trade matters, with annexes. Effected by exchange of letters at Arlington and Washington October 24, 1979. Entered into force October 24, 1979; effective January 1, 1980.

2. Agreement concerning trade matters. Effected by exchange of letters at Arlington and Washington December 31, 1981. Entered into force December 31, 1981.

3. Agreement concerning measures that the CCNAA will undertake in connection with implementation of the GATT Customs Valuation Code. Effected by exchange of letters at Bethesda and Arlington August 22, 1986. Entered into force August 22, 1986.

4. Agreement concerning the export performance requirement affecting investment in the automotive sector. Effected by exchange of letters at Washington and Arlington October 9, 1986. Entered into force October 9, 1986.

5. Agreement concerning beer, wine and cigarettes. Signed at Washington December 12, 1986. Entered into force December 12, 1986, effective January 1, 1987.

6. Agreement implementing the agreement of December 12, 1986 concerning beer, wine and cigarettes. Effected by exchange of letters at Taipei April 29, 1987. Entered into force April 29, 1987, effective January 1, 1987.

7. Agreement concerning trade in whole turkeys, turkey parts, processed turkey products and whole ducks, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington March 16, 1989. Entered into force March 16, 1989.

8. Agreement concerning the protection of trade in strategic commodities and technical data, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington December 4, 1990 and April 8, 1991. Entered into force April 8, 1991.

9. Administrative arrangement concerning the textile visa system. Effected by exchange of letters at Arlington and Washington April 18 and May 1, 1991. Entered into force May 1, 1991.

10. Agreement regarding new requirements for health warning legends on cigarettes sold in the territory represented by CCNAA. Effected by exchange of letters at Washington and Arlington October 7 and 16, 1991. Entered into force October 16, 1991.

11. Memorandum of understanding concerning a new quota arrangement for cotton and man-made fiber trousers. Signed at Washington December 18, 1992. Entered into force December 18, 1992.

12. Memorandum of understanding on the exchange of information concerning commodity futures and options matters, with appendix. Signed January 11, 1993. Entered into force January 11, 1993.

13. Agreement concerning a framework of principles and procedures for consultations regarding trade and investment, with annex. Signed at Washington September 19, 1994. Entered into force September 19, 1994.

14. Visa arrangement concerning textiles and textile products. Effected by exchange of letters of April 30 and September 3 and 23, 1997. Entered into force September 23, 1997.

15. Agreement concerning trade in cotton, wool, man-made fiber, silk blend and other non-cotton vegetable fiber textile products, with attachment. Effected by exchange of letters December 10, 1997. Entered into force December 10, 1997, effective January 1, 1998.

16. Agreed minutes on government procurement issues. Signed December 17, 1997. Entered into force December 17, 1997.

17. Understanding concerning bilateral negotiations on the WTO accession of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) and the United States. Signed February 20, 1998. Entered into force February 20, 1998.

18. Agreement on mutual recognition for equipment subject to electro-magnetic compatibility (EMC) regulations. Signed March 16, 1999. Entered into force March 16, 1999.

19. Agreement concerning the Asia Pacific Economic Cooperation mutual recognition arrangement for conformity assessment of telecommunications equipment (APEC Telecon MRA). Signed March 16, 1999. Entered into force March 16, 1999.

20. Memorandum of understanding on the extension of trade in textile and apparel products. Signed February 9, 2001. Entered into force February 9, 2001.

21. Joint Arrangement for Sharing of Information Exchanged in Confidence. Signed September 7, 2010 and

September 7, 2010. Entered into force September 7, 2010.

[FR Doc. 2012–7931 Filed 4–2–12; 8:45 am]

BILLING CODE 4710–49–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Programs and Plans Task Force on Unsolicited Mid-Scale Research, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Monday, April 16, 2012, 1–2 p.m. EDT.

SUBJECT MATTER: (1) Chair's opening remarks; and (2) Discussion of a revised draft of the final report of the NSB Task Force on Unsolicited Mid-Scale Research.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: Matthew B. Wilson, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2012–8062 Filed 3–30–12; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–374; 2012–0083]

Exelon Generation Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Exelon Generation Company (the licensee) to withdraw its October 26, 2011, application for proposed amendment to Facility Operating License No. NPF–18 for the LaSalle County Station, Unit 2, located in LaSalle County, Illinois.

The proposed amendment would have revised license condition 2.C.(32) to require the installation of NETCO–SNAP–IN® inserts to be completed no later than December 31, 2012. In addition, license condition 2.C.(31) would be revised to apply until March 31, 2012, and a new license condition 2.C.(34) was proposed to prohibit fuel storage after March 31, 2012, in spent fuel pool storage rack cells that had not been upgraded with the NETCO–SNAP–IN® inserts.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 10, 2012 (77 FR 1514). However, by letter dated January 6, 2012, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 26, 2011, and the licensee's letter dated January 6, 2012, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of March 2012.

For the Nuclear Regulatory Commission.

Nicholas J. DiFrancesco,

Project Manager, Plant Licensing Branch 3–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–7949 Filed 4–2–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2011–0259]

License Amendment To Increase the Maximum Reactor Power Level, Florida Power & Light Company, Turkey Point, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Final environmental assessment and finding of no significant impact.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuing an amendment for Renewed Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power & Light Company (FPL or the licensee) for operation of the Turkey Point (PTN), Units 3 and 4, to increase the maximum power level from 2300 megawatts thermal (MWt) to 2644 MWt for each unit. The proposed power increase is approximately 15-percent over the current licensed thermal power, including a 13-percent power uprate and a 1.7-percent measurement uncertainty recapture, and approximately a 20-percent increase from the original licensed power level of 2200 MWt. The NRC did not identify any significant environmental impacts associated with the proposed action based on its evaluation of the information provided in the licensee's application and other available information, and has prepared this final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the proposed action.

ADDRESSES: Please refer to Docket ID NRC–2011–0259 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0259. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-

available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jason Paige, Project Manager, Plant Licensing Branch 2–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5888; email: *Jason.Paige@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment for Renewed Facility Operating License Nos. DPR–31 and DPR–41, issued to FPL for operation of the PTN, Units 3 and 4, for a license amendment to increase the maximum power level from 2300 MWt to 2644 MWt for each unit. In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 51.21, the NRC has prepared this final EA and FONSI for the proposed action. The proposed power increase is approximately 15-percent over the current licensed thermal power, including a 13-percent power uprate and a 1.7-percent measurement uncertainty recapture, and approximately a 20-percent increase from the original licensed power level of 2200 MWt. The NRC did not identify any significant environmental impacts associated with the proposed action based on its evaluation of the information provided in the licensee's application and other available information. For further details with respect to the proposed action, see the licensee's application dated October 21, 2010, as supplemented by letters dated December 14, 2010 (ADAMS Accession No. ML103560167), and April 22, 2011 (ADAMS Accession No. ML11115A114).

The NRC published a notice in the **Federal Register** requesting public review and comment on a draft EA and FONSI for the proposed action on November 17, 2011 (76 FR 71379), and established December 19, 2011, as the deadline for submitting public comments. By letters dated December 9, 2011 (ADAMS Accession No. ML11347A194), and December 12, 2011 (ADAMS Accession No. ML12027A023), comments were received from FPL and Mr. Steve Torcise, Jr., of the Atlantic Civil, Inc., respectively. The FPL comments provided new estimates on the number of additional workers needed to support the outage work implementing the proposed Extended Power Uprate (EPU) and revised the projected outage times necessary to implement the EPU. The FPL comments have been incorporated into this final EA with no change to the FONSI conclusion. The Atlantic Civil, Inc. comments have been incorporated into this final EA with no change to the FONSI conclusion and are summarized in the ''Summary of Comments'' (ADAMS Accession No. ML12075A035). Also, by letter dated January 12, 2012 (ADAMS Accession Number ML12019A348), the Southeast Regional Office of the U.S. Department of the Interior's National Park Service provided comments on the draft EA and draft FONSI. Since these comments were received after the comment period deadline of December 19, 2011, the NRC will address these comments using separate correspondence.

II. Environmental Assessment

Plant Site and Environs

The PTN site is located on 11,000 acres (ac) (4,450 hectares (ha)) in Florida's South Miami-Dade County approximately 25 miles (mi) (40 kilometers [km]) south of Miami, Florida. The nearest city limits are Florida City approximately 8 miles (13 km) to the west, Homestead at approximately 4.5 miles (7 km) to the northwest and Key Largo at approximately 10 miles (16 km) south of the PTN site. The PTN site is bordered to the east by Biscayne National Park (BNP), to the north by the BNP and Homestead Bayfront Park, and on the west and south by FPL's 13,000 ac (5,260 ha) Everglades Mitigation Bank. The PTN site consists of five electric generating units. Units 3 and 4 at the PTN site are nuclear reactors; Units 1, 2, and 5 are fossil-fueled units and are not covered by the proposed licensing action. Each nuclear reactor is a Westinghouse pressurized light-water reactor with three steam generators producing steam that turns turbines to generate electricity. The site features a 5,900 ac (2,390 ha) system of closed, recirculating cooling canals that are used to cool the heated water discharged by Units 1 through 4. Unit 5 has mechanical draft cooling towers for the steam generation cycle using water from the Upper Floridan Aquifer (UFA) as makeup and routing cooling tower blowdown to the cooling canal system. The five units and supporting equipment (excluding the cooling canal system) occupy approximately 130 ac (53 ha).

In June 2009, FPL submitted an application for a combined construction permit and operating license (COL) for two Westinghouse Advanced Passive 1000 (AP1000) pressurized-water reactors (PWRs) designated as PTN, Units 6 and 7.

Background Information on the Proposed Action

By application dated October 21, 2010, the licensee requested an amendment to its license for an EPU for PTN Units 3 and 4 to increase the licensed thermal power level from 2300 MWt to 2644 MWt for each unit. This represents an increase of approximately 15-percent above the current licensed thermal power, including a 13-percent power uprate and a 1.7-percent measurement uncertainty recapture. This change requires NRC approval prior to the licensee implementing the EPU. The proposed action is considered an EPU by the NRC because it exceeds the typical 7-percent power increase that can be accommodated with only minor plant changes. An EPU typically involves extensive modifications to the nuclear steam supply system contained within the plant buildings.

The licensee plans to make extensive physical modifications to the plant's secondary side (i.e., non-nuclear) steam supply system to implement the proposed EPU. These modifications would occur during separate refueling outages for each unit. The EPU-related work for Unit 3 is scheduled for the spring 2012 outage and Unit 4 during the fall 2012 outage. The EPU, if approved by the NRC, would be implemented following each unit's refueling outage in 2012.

Approximately 800 people are employed at PTN Units 3 and 4 on a full-time basis with increases of approximately 600–900 during refueling outages. The licensee estimates that it will need approximately 2500 workers for implementation of the EPU resulting in a potential maximum outage/EPU workforce of approximately 3400 during each of the EPU outages.

As part of the overall process to obtain approval for the EPU, in September 2007, FPL submitted a

Petition to Determine Need for Expansion of Electrical Power Plants to the Florida Public Service Commission (FPSC). The petition contained FPL's analysis for meeting the need for electric system reliability, integrity, and providing adequate electricity at a reasonable cost; how the proposed EPU is the most cost-effective alternative available; and why there are no renewable energy sources and technologies or conservation measures reasonably available to FPL that would avoid or mitigate the need for the proposed EPU. On January 7, 2008, the FPSC issued a Final Order Granting Petition for Determination of Need approving the proposed expansion of PTN Units 3 and 4 based on compliance with conditions required by the state.

The Need for the Proposed Action

As stated in the FPL's application, the proposed action is to provide an additional supply of electric generation in the State of Florida without the need to site and construct new facilities. The proposed EPU will increase the electrical output for each unit by about 104 megawatts electric (MWe), from about 700 MWe to about 804 MWe.

Environmental Impacts of the Proposed Action

As part of the original licensing process for PTN Units 3 and 4, the NRC published a Final Environmental Statement (FES) in July 1972. The FES contains an evaluation of the potential environmental impacts associated with the operation of PTN Units 3 and 4 over their licensed lifetimes. In 2002, the NRC evaluated the environmental impacts of renewing the operating license of PTN Units 3 and 4 for an additional 20 years beyond its current operating license. The NRC concluded that the overall environmental impacts of license renewal were small. This evaluation is presented in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plant, Supplement 5, Regarding Turkey Point, Units 3 and 4'' (EIS Supplement No. 5 (SEIS–5)) issued in January 2002 (ADAMS Accession Nos. ML020280119, ML020280202, and ML020280226). Additionally, in October 2008, the State of Florida Department of Environmental Protection (FDEP) completed a thorough and comprehensive review under the Florida Electrical Power Plant Siting Act and issued a site certification to FPL approving the proposed EPU for PTN Units 3 and 4. In June 2009, FPL submitted an application for a COL for two AP1000 PWRs designated as PTN, Units 6 and 7. The COL application included an Environmental Report (ER) with FPL's analysis of the reasonably foreseeable impacts to the environment from the construction and operation of the two new units along with an environmental description of the existing PTN site. The NRC staff used information from the licensee's license amendment request for the EPU, the FESs, SEIS–5 to NUREG–1437, documents related to the FDEP site certification process, and information provided in the Turkey Point COL Environmental Report to perform its EA for the proposed EPU for PTN Units 3 and 4.

In order to implement the EPU, significant modifications will be required to the steam and power conversion equipment located within the buildings of PTN Units 3 and 4. Two changes outside of the reactor buildings including a change to the electric switchyard to accommodate new electrical equipment and construction of a temporary warehouse for EPU-related equipment would occur in developed portions of the power plant site. Modifications to the secondary side (i.e., non-nuclear) of each unit include the following: Replacing the high-pressure turbine, modifying condensate pump operations, installing fast acting backup automatic feedwater isolation valves, replacing two feedwater heaters, providing supplemental cooling for selected plant systems, implementing electrical upgrades, system modifications to accommodate greater steam and condensate flow rates, and changing system setpoints and associated software.

The sections below describe the potential nonradiological and radiological impacts to the environment that could result from the proposed EPU.

Nonradiological Impacts

Land Use and Aesthetic Impacts

Potential land use and aesthetic impacts from the proposed EPU include impacts from plant modifications at the PTN site. While some plant components would be modified, most plant changes related to the proposed EPU would occur within existing structures, buildings, and fenced equipment yards housing major components within the developed part of the site. As previously discussed, EPU-related modifications at the PTN plant site would occur within the developed portions of the power plant site.

Existing parking lots, road access, equipment lay-down areas, offices, workshops, warehouses, and restrooms would be used during plant modifications. Therefore, land use conditions would not change at the PTN site. Also, there would be no land use changes along transmission line corridors and no new transmission lines would be required. The PTN Units 3 and 4 electric switchyard would be expanded to accommodate new equipment, which will be expanded on previously disturbed or already developed portions of the PTN site.

Since land use conditions would not change at the PTN site, and because any land disturbance would occur within previously disturbed areas, there would be little or no impact to aesthetic resources in the vicinity of PTN Units 3 and 4. Therefore, there would be no significant impact from EPU-related plant modifications on land use and aesthetic resources in the vicinity of the PTN site.

Air Quality Impacts

Major air pollution emission sources at the PTN site are regulated by the FDEP's Division of Air Resource Management under the Prevention of Significant Deterioration program. Nonradioactive emission sources at PTN Units 3 and 4 consist of four 2.5 MWe emergency generators, five smaller emergency generators, and various general purpose generators regulated under a Florida Title V Air Operating Permit. There will be no changes to the emissions from these sources as a result of the EPU.

Some minor and short duration air quality impacts would occur during implementation of the EPU at the PTN site. The main source of air emissions would come from the vehicles driven by outage workers needed to implement the EPU. However, air emissions from the EPU workforce, truck deliveries, and construction/modification activities would not be significantly greater than previous refueling outages at the PTN site.

Upon completion of the proposed EPU, nonradioactive air pollutant emissions would not increase. Therefore, there would be no significant impact on air quality in the region during and following implementation of the proposed EPU.

Water Use Impacts

Surface Water

The PTN Units 3 and 4 are located in the low-lying areas of coastal Miami-Dade County on the western shore of Biscayne Bay. There are no significant freshwater surface bodies outside of the PTN site (i.e., lakes, major rivers, or dams), but there is a network of canals, such as the Everglades National Park-

South Dade Conveyance System, in addition to local drainage canals that either control drainage from southeast Florida to Biscayne Bay or provide freshwater to the Everglades National Park. The most significant surface water body on the PTN site is the closed-cycle cooling canal system (CCS), permitted by the State of Florida as an industrial wastewater facility, used for the cooling of heated water discharged from the main condensers and auxiliary systems of PTN Units 1 through 4.

The CCS covers approximately 5,900 ac (2,390 ha) of the PTN site with a large system of north-south aligned 168 miles of interconnected earthen canals to dissipate heat through surface evaporation. The canals are a closed recirculating loop that serves as the ultimate heat sink for PTN Units 3 and 4. The CCS is operated under an industrial wastewater facility ''No Discharge'' National Pollutant Discharge Elimination System (NPDES) permit from the FDEP (NPDES permit number FL0001562) for water discharges to an onsite closed-loop recirculation cooling canal system. The seasonal temperature of the canal water ranges from approximately 85 °F to 105 °F (29 °C to 40 °C) for heated water entering the CCS with cooled water returning to the power plants at approximately 70 °F to 90 °F (21 °C to 32 °C). Additionally, the CCS water is hyper-saline (twice the salinity of Biscayne Bay) with seasonal variations ranging from approximately 40 to 60 parts per thousand (ppt).

The CCS does not discharge directly to fresh or marine surface waters. Makeup water to replace water lost due to evaporation comes from used plant process water that has been treated, incident rainfall, storm water runoff, and from infiltration and exchange of saline water with local groundwater and Biscayne Bay. Because the PTN canals are unlined, there is an exchange of water between the PTN canal system and local groundwater and Biscayne Bay. An interceptor ditch is located along the west side of the CCS. During the dry season, when the natural groundwater gradient is from Biscayne Bay and Card Sound toward the Everglades, water is pumped from the interceptor ditch to the CCS to create an artificial groundwater gradient from the Everglades into the ditch. This process is used to minimize the flow of hyper-saline water from the CCS toward the Everglades. Maintenance of the CCS includes mechanical removal of submerged, rooted marine plants on an approximate 3-year cycle and removal of terrestrial woody vegetation from the canal berms on a 10-year cycle.

Each nuclear unit discharges approximately 5.35 billion British Thermal Units (BTU) per hour of waste heat to the CCS. Under the proposed EPU, the quantity of waste heat discharged by each nuclear unit to the CCS would increase to approximately 6.10 billion BTU per hour. This results in a net total increase of 1.5 billion BTU in waste heat discharged by both nuclear units. The licensee calculated that the maximum change in water temperature due to the proposed EPU would be approximately 2.0 °F to 2.5 °F (1.1 °C to 1.4 °C) for a total maximum water temperature up to 108.6 °F (42.6 °C) for water entering the CCS and a 0.9 °F (0.5 °C) increase with a total maximum water temperature up to 92.8 °F (33.8 °C) for the water returning to the power plants. The licensee calculated that the higher water temperature will increase water losses from the CCS due to evaporation resulting in a slight increase in salinity of approximately 2 to 3 ppt.

In accordance with the FDEP site certification process for the proposed EPU, FPL must meet state imposed requirements contained in the Conditions of Certification (CoC). The CoC was developed based on interactions by FPL with the FDEP and other stakeholders, including opportunities for public comment, during the FDEP site certification process. The inclusion of stakeholders' recommendations into the CoC formed the basis for FDEP recommending approval of the site certification application for the proposed EPU. The CoC requires FPL to have a program to monitor and assess the potential direct and indirect impacts to ground and surface water from the proposed EPU. The monitoring includes measuring water temperature and salinity in the CCS and monitoring the American crocodile populations at the PTN site. The monitoring plan expands FPL's monitoring of the CCS's ground and surface water to include the land and water bodies surrounding the PTN site such as Biscayne Bay.

The implementation of the CoC monitoring plan is an ongoing program coordinated by FDEP. The results of the monitoring will be publicly available via a South Florida Water Management District (SFWMD) Web site. If the proposed EPU is approved by the NRC, the CoC monitoring plan would continue to assess the environmental impacts. The CoC allows FDEP to impose additional measures if the monitoring data is insufficient to adequately evaluate environmental changes, or if the data indicates a significant degradation to aquatic resources by exceeding State or County water quality standards, or the monitoring plan is inconsistent with the goals and objectives of the Comprehensive Everglades Restoration Plan Biscayne Bay Coastal Wetlands Project. Additional measures could include enhanced monitoring, modeling, or mitigation. Abatement actions provided in the CoC include: mitigation measures to comply with State and local water quality standards, which may include methods to reduce and mitigate salinity levels in groundwater; operational changes to the PTN cooling canal system to reduce environmental impacts; and other measures required by FDEP in consultation with SFWMD and Miami-Dade County to reduce the environmental impacts to acceptable levels.

The field data on surface water monitoring currently available are being reviewed by FPL, FDEP, SFWMD, and stakeholders for the development of a water budget model. The data and other documentation show that there is indirect surface water communication between the CCS and Biscayne Bay. Approving the proposed EPU license amendment is not expected to cause significant impacts greater than current operations because the monitoring plan will provide data for FPL and state agencies to assess the effectiveness of current environmental controls and additional limits and controls could be imposed if the impacts are larger than expected. Therefore, there would be no significant impact to surface water resources following implementation of the proposed EPU.

Groundwater

Southeastern Miami/Dade County is underlain by two aquifer systems; the unconfined Biscayne Aquifer and the Floridan Aquifer System (FAS). The Biscayne Aquifer has been declared a sole-source aquifer by the U.S. Environmental Protection Agency (EPA). The Biscayne Aquifer underlying the PTN site, however, contains saline to saltwater in this area and is not usable as a potable water supply. The FAS underlies approximately 100,000 square miles (258,000 km^2) in southern Alabama, southeastern Georgia, southern South Carolina, and all of Florida. The FAS is a multiple-use aquifer system in that where it contains freshwater, it is the principal source of water supply. Where the aquifer contains saltwater, such as along the southeastern coast of Florida, treated sewage and industrial wastes are injected into it.

Recharge of groundwater at the PTN site varies seasonally between surface recharge during the rainy season and saline recharge from the ocean during the dry season. As a result, there is a large seasonal variation in the salinity of the groundwater near the surface at the PTN site. However, below about 40 ft (12 meters (m)) into the Biscayne aquifer, relatively high salinity (greater than 28 ppt) exists year round. Florida classifies the groundwater in this area as G–III based on its salinity. This classification is used to identify groundwater that has no reasonable potential as a future source of drinking water due to high total dissolved solids.

The current and proposed operations at the PTN site do not require the withdrawal of groundwater. The potable water and general service water supply at the PTN site are provided by Miami-Dade County public water supply. This potable water comes from the Biscayne Aquifer, which occurs at or close to the ground surface and extends to a depth of about 70 ft (21 m) below the surface. The PTN Units 3 and 4 use approximately 690 gallons per minute (2612 liters per minute (L/min)) of potable water. The licensee is not requesting an increase in water supply under the proposed EPU. Therefore, no significant impacts to offsite users of the Miami-Dade public water supply are expected.

As discussed in the surface water impacts section, the FPL's implementation of the CoC monitoring plan is ongoing and consists of an integrated system of surface, groundwater, vadose zone, and ecologic sampling. Fourteen groundwater monitoring well clusters at selected sites have been constructed in accordance with the monitoring plan and an associated quality assurance plan. The field data collected prior to implementation of the proposed EPU will be used to characterize existing environmental conditions from current PTN operations. The CoC allows the FDEP to require additional measures if the pre- and post-EPU monitoring data are insufficient to evaluate changes as a result of the EPU. If the data indicate an adverse impact, additional measures, including enhanced monitoring, modeling or mitigation, would likely be required to evaluate or to abate such impacts.

Abatement actions provided in the CoC include: (1) Mitigation measures to offset such impacts of the proposed EPU necessary to comply with State and local water quality standards; (2) operational changes in the cooling canal system to reduce impacts; and (3) other measures to abate impacts specified a revised CoC approved by the FDEP after consultation with SFWMD and Miami-Dade County.

Approving the proposed EPU license amendment is not expected to cause significant impacts greater than current operations because the monitoring plan will provide data for FPL and state agencies to assess the effectiveness of current environmental controls and additional limits and controls could be imposed if the impacts are larger than expected. Therefore, there would be no significant impact to the groundwater following implementation of the proposed EPU.

Aquatic Resources Impacts

The discharges of chemicals and heated wastewater from PTN Units 3 and 4 have the potential to impact aquatic biota from the proposed EPU. Biscayne Bay and Card Sound are shallow, subtropical marine waters located between the mainland and a grouping of barrier islands that form the northernmost Florida Keys. These waters contain a variety of marine life, including seagrass, sponges, mollusks, crustaceans, fish, sea turtles, and marine mammals. The portion of Biscayne Bay adjacent to Turkey Point is part of Biscayne National Park, which includes the mainland shore, the bay, the keys, and offshore coral reefs. The Intracoastal Waterway traverses Biscayne Bay and Card Sound, and a barge passage runs from the Intracoastal Waterway to the fossil-fueled facility at the PTN site. Biscayne Bay and Card Sound would be unaffected by the proposed EPU because FPL does not withdraw or discharge to any natural water body.

Turkey Point's cooling system receives heated water discharged from the two reactors as well as from the two fossil fueled electric generating stations. The cooling system spans about 5,900 ac (2,400 ha) spread out over a 5 mi by 2 mi (8 km by 3.2 km) area of the site. The heated water is discharged into a series of 32 feeder channels that dissipate the heat. The feeder channels merge into a single collector canal that returns the cooled water to the plants through a main return canal and six return channels.

Under EPU conditions, the cooling canal system would increase in both temperature and salinity. The licensee predicts that discharged water would increase a maximum of an additional 2.5 °F (1.4 °C), which would increase the change in temperature as water passes through the condensers from 16.8 °F to 18.8 °F (9.3 to 10.4 °C). Because condenser cooling water discharges at the northeastern corner of the cooling canal system flows west, and then south, the system exhibits a north-south temperature gradient. Therefore, while the northeast portion of the system may increase by 2.0 °F to 2.5 °F (1.1 °C to 1.4 °C) under EPU conditions, the temperature increase attributable to the EPU would decrease as water moves south through the system. The increased discharge temperatures will cause additional evaporative losses to the cooling canal system. The Florida Department of Environmental Protection predicted that an additional 2 to 3 million gallons per day (7,600 to 11,000 cubic meters per day) will be lost to evaporation under EPU conditions. The increased evaporation would, in turn, increase the cooling canal's salinity of 40 to 60 ppt by 2 to 3 ppt. Due to the north-south temperature gradient, evaporative losses would be greater in the northern portion of the canal system, and thus, salinity will also demonstrate a north-south gradient.

The cooling canal system supports a variety of aquatic species typical of shallow, subtropical, hyper-saline environments, including phytoplankton, zooplankton, marine algae, rooted plants, crabs, and estuarine fish. The most abundant fish in the cooling canal system is killifish (Family Cyprinidontidae). The aquatic species found within the cooling canal system are subtropical or tropical and readily adapt to hyper saline environments. The aquatic populations within the cooling canal system do not contribute any commercial or recreational value because the cooling canal system is owner-controlled and closed to the public.

Because aquatic organisms in the cooling canal system are unable to travel to or from Biscayne Bay, Card Sound, or any other natural water body, changes to the conditions within the cooling canal system would not affect any aquatic species' populations in the natural aquatic habitats. Therefore, the staff concludes that there would be no significant impacts to aquatic resources as a result of the proposed EPU.

Terrestrial Resources Impacts

The PTN site is situated on low, swampy land that was previously mangrove-covered tidal flats. Mangrove swamps extend inland approximately 3 to 4 mi (5 to 6.5 km), and undeveloped portions of the site remain under 1 to 3 inches (2 to 8 centimeters) of water, even during low tide. Of the 24,000-ac (9,700-ha) site, approximately 11,000-ac is developed for PTN Units 3 and 4, the cooling canal system, and three FPL-owned fossil fuel units.

The impacts that could potentially affect terrestrial resources include loss

of habitat, construction and refurbishment-related noise and lighting and sediment transport or erosion. Because all activities associated with the EPU would occur on the developed portion of the site, the proposed EPU would not directly affect any natural terrestrial habitats and would not result in loss of habitat. Noise and lighting would not impact terrestrial species beyond what would be experienced during normal operations because refurbishment and construction activities would take place during outage periods, which are already periods of heightened activity. Sediment transport and erosion is not a concern because activity would only take place on previously developed land and best management practices would ensure that no loose sediment is transported to wetland areas, tidal flats, or waterways. The staff concludes that the proposed EPU would have no significant effect on terrestrial resources.

Threatened and Endangered Species Impacts

Under Section 7 of the Endangered Species Act of 1973, as amended (ESA), Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (as appropriate), must ensure that actions the agency authorizes, funds, or carries out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

In order to fulfill its duties under section 7 of the ESA, the NRC prepared and submitted a biological assessment to the FWS on September 9, 2011, in order to determine the potential effects of the proposed EPU on Federally listed species. The following Table identifies the species that the NRC considered in its biological assessment.

TABLE OF FEDERALLY LISTED SPECIES OCCURRING IN MIAMI-DADE COUNTY

Scientific name	Common name	ESA status [a]
Aquatic Invertebrates		
Acropora cervicornis	staghorn coral	PT
Acropora palmate	elkhorn coral	PT
Birds		
Ammodramus maritimus mirabilis	Cape Sable seaside sparrow	E
Charadrius melodus	piping plover	T
Dendroica kirtlandii	Kirtland's warbler [b]	E
Mycteria americana	wood stork	E
Polyborus plancus audubonii	Audubon's crested caracara [b]	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E
Vermivora bachmanii	Bachman's warbler [b]	E
Fish		
Pristis pectinata	smalltooth sawfish	E
Flowering Plants		
Amorpha crenulata	crenulate lead-plant	E
Chamaesyce deltoidea ssp. Deltoidea	deltoid spurge	E
Chamaesyce garberi	Garber's spurge	T
Cucurbita okeechobeensis ssp. Okeechobeensis	okeechobee gourd [b]	E
Galactia smallii	Small's milkpea	E
Halophia johnsonii	Johnson's sea grass	T
Jacquemontia reclinata	beach jacquemontia	E
Polygala smallii	tiny polygala	E
Insects		
Heraclides aristodemus ponceanus	schaus swallowtail butterfly	E
Mammals		
Puma concolor	mountain lion[b]	T/SA
Felis concolor coryi	Florida panther	E
Trichechus manatus	West Indian manatee	E
Reptiles		
Alligator mississippiensis	American alligator	T/SA
Caretta caretta	loggerhead sea turtle	T
Chelonia mydas	green sea turtle	E
Crocodylus acutus	American crocodile	T
Dermochelys coriacea	leatherback sea turtle	E
Drymarchon corais couperi	eastern indigo snake	T

TABLE OF FEDERALLY LISTED SPECIES OCCURRING IN MIAMI-DADE COUNTY—Continued

Scientific name	Common name	ESA status [a]
Eretmochelys imbricata	hawksbill sea turtle	E
Lepidochelys kempii	Kemp's ridley sea turtle [c]	E
Snails		
Orthalicus reses	Stock Island tree snail [b]	T

[a] E = endangered; PT = proposed threaten; T = threatened; T/SA = threatened due to similarity of appearance.
[b] Species not previously considered in 2001 biological assessment for Turkey Point.
[c] The Kemp's ridley is not listed by the FWS as occurring in Miami-Dade County. However, the species occurs in the neighboring Monroe County and FPL has reported the species' occurrence in Biscayne Bay and Card Sound.
Source: U.S. Fish and Wildlife Service.

In the biological assessment, the NRC concluded that the proposed EPU may adversely affect the American crocodile (*Crocodylus acutus*). The NRC concluded that the proposed EPU would not adversely affect the remaining 30 species listed in the Table above. The NRC also concluded that the proposed EPU may adversely modify the cooling canal system, which is designated as a critical habitat for the American crocodile.

The FWS responded to NRC's biological assessment on October 25, 2011. In their letter, the FWS concluded that the proposed EPU may affect, but is not likely to adversely affect, the American crocodile. The FWS also noted that the proposed EPU is unlikely to result in modification to designated American crocodile critical habitat. This letter fulfilled the NRC's requirements under Section 7 of the ESA.

Based on the FWS's conclusions, the NRC concludes that the proposed EPU would not significantly impact threatened or endangered species.

Historic and Archaeological Resources Impacts

As reported in the SEIS–5, the NRC reviewed historic and archaeological site files at the Florida Department of State, Division of Historical Resources; the National Park Service Southeast Archaeological Center; and at Biscayne National Park; and confirmed that no historic or archaeological and historic architectural sites have been recorded on the PTN site. As previously discussed, EPU-related plant modifications would take place within existing buildings and facilities at PTN, except for the expansion of the switchyard on previously disturbed land. Since ground disturbance or construction-related activities would not occur outside of previously disturbed areas, there would be no significant impact from the proposed EPU on historic and archaeological resources in the vicinity of PTN Units 3 and 4 and the switchyard.

Socioeconomic Impacts

Potential socioeconomic impacts from the proposed EPU include increased demand for short-term housing, public services, and increased traffic in the region due to the temporary increase in the number of workers at the PTN site required to implement the EPU. The proposed EPU could also increase tax payments due to increased power generation.

Approximately 800 people are employed at PTN Units 3 and 4 on a full-time basis with increases of approximately 600–900 during periodic refueling outages. These workers reside primarily in Miami-Dade County, Florida. The licensee estimates that it will need approximately 2500 workers for implementation of the EPU resulting in a potential maximum outage/EPU workforce of approximately 3400 during each of the EPU outages. The licensee estimates that the outages to implement the EPU will last approximately 160 days for Unit 3 and 130 days for Unit 4. As previously discussed, EPU-related modifications would take place during the spring and fall 2012 refueling outages for Units 3 and 4, respectively. Once EPU-related plant modifications have been completed, the size of the refueling outage workforce would return to normal levels, with no significant increases expected during future refueling outages. The size of the regular plant workforce is not expected to be affected by the proposed EPU.

Most of the EPU-related plant modification workers would be expected to relocate temporarily to Miami-Dade County, resulting in short-term increases in the local population along with increased demands for public services and housing. Because plant modification work would be short-term and up to half a year, most workers would stay in available rental homes, apartments, mobile homes, and camper-trailers. According to the 2010 census housing data, there were approximately 122,000 vacant housing units in Miami-Dade County available to meet the demand for rental housing. Additionally, there are over 200,000 available public lodging accommodations in Miami-Dade County. Therefore, a temporary increase in plant employment for this duration would have little or no noticeable effect on the availability of housing and public services in the region.

The principal road access to the PTN site is via East Palm Drive (SW 344 Street). East Palm Drive is a two-lane road for approximately half of its length from the PTN plant to Florida City, where it intersects with U.S. Highway 1 approximately 14 km (9 miles) from the PTN site. Increased traffic volumes during normal refueling outages typically have not degraded the level of service capacity on local roads. The FPL evaluation asserts that the projected traffic will remain well within the Miami-Dade County peak hour capacity. Therefore, the roadways used by plant workers and the public are expected to operate at an acceptable level of service as designated by Miami-Dade County. However, the additional number of workers and truck material and equipment deliveries needed to support EPU-related plant modifications could cause short-term level of service impacts on access roads in the immediate vicinity of PTN. During periods of high traffic volume (i.e., morning and afternoon shift changes), work schedules could be staggered and employees and/or local police officials could be used to direct traffic entering and leaving the PTN site to minimize level of service impacts on SW 334th Street (East Palm Drive).

Tangible personal property (principally business equipment) and real property (namely land and permanent buildings) are subject to property tax in Florida as administered by the local government. For 2007, FPL

paid approximately $6.9 million to Miami-Dade County and the Miami-Dade school district in real property taxes for PTN Units 3 and 4. Future property tax payments could take into account the increased value of PTN Units 3 and 4 as a result of the EPU and increased power generation.

Due to the short duration of EPU-related plant modification activities, there would be little or no noticeable effect on tax revenues generated by temporary workers residing in Miami-Dade County. Therefore, there would be no significant adverse socioeconomic impacts from EPU-related plant modifications and operations under EPU conditions in the vicinity of the PTN site.

Environmental Justice Impacts

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from activities associated with the proposed EPU at the PTN site. Such effects may include human health, biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing in the vicinity of the PTN site, and all are exposed to the same health and environmental effects generated from activities at PTN Units 3 and 4.

The NRC considered the demographic composition of the area within a 50-mi (80-km) radius of the PTN site to determine the location of minority and low-income populations and whether they may be affected by the proposed action.

Minority populations in the vicinity of the PTN site, according to the U.S. Census Bureau data for 2000, comprise approximately 70 percent of the population (approximately 2,170,000 individuals) residing within a 50-mile (80-kilometer) radius of the PTN site. The largest minority group was Hispanic or Latino (approximately 1,465,000 persons or 47 percent), followed by Black or African Americans (approximately 670,000 persons or about 22 percent).

According to the U.S. Census Bureau, about 83 percent of the Miami-Dade County population identified themselves as minorities, with persons of Hispanic or Latino origin comprising the largest minority group (63 percent). According to 2009 American Community Survey census data 1-year estimate, as a percent of total population, the minority population of Miami-Dade County increased approximately one percent, with persons of Hispanic or Latino origin comprising the largest minority group (82 percent) in 2009.

According to 2000 census data, low-income populations comprised approximately 98,000 families and 488,000 individuals (approximately 13 and 16 percent, respectively) residing within a 50-mi (80-km) radius of the PTN site.

The 2009 Federal poverty threshold was $22,490 for a family of four with one related child under 18 years. According to census data in the 2009 American Community Survey 1-Year Estimate, the median household income for Florida was $53,500, with 11 percent of families and 15 percent of individuals determined to be living below the Federal poverty threshold. Miami-Dade County had a lower median household income average ($42,000) than the State of Florida and also had higher percentages of county families (14 percent) and individuals (18 percent), respectively, living below the poverty level.

Environmental Justice Impact Analysis

Potential impacts to minority and low-income populations would mostly consist of environmental and socioeconomic effects (e.g., noise, dust, traffic, employment, and housing impacts). Radiation doses from plant operations after the EPU are expected to continue to remain below regulatory limits.

Noise and dust impacts would be short-term and limited to onsite activities. Minority and low-income populations residing along site access and the primary commuter roads through Florida City, Florida (e.g., U.S. Highway 1 and East Palm Drive) could experience increased commuter vehicle traffic during shift changes. Increased demand for rental housing during EPU-related plant modifications could disproportionately affect low-income populations. However, due to the short duration of the EPU-related work and the availability of rental housing, impacts to minority and low-income populations would be short-term and limited. According to 2010 census information, there were approximately 122,000 vacant housing units in Miami-Dade County and approximately 20,000 vacant housing units in Monroe County.

Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the proposed EPU would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the PTN site.

Nonradiological Cumulative Impacts

The NRC considered potential cumulative impacts on the environment resulting from the incremental impact of the proposed EPU when added to other past, present, and reasonably foreseeable future actions. For the purposes of this analysis, past actions are related to the construction and licensing of PTN Units 3 and 4, present actions are related to current operations, and future actions are those that are reasonably foreseeable through the end of station operations including operations under the EPU.

The application to build two new nuclear units at the PTN site is considered a reasonably foreseeable future action that is considered in this review. A COL application was submitted by FPL to the NRC in June 2009, for the construction and operation of two Westinghouse AP1000 units at the PTN site along with the construction of transmission corridors. It is expected, however, that the proposed EPU, if approved, would be completed prior to the construction of the new units. Thus, the cumulative impacts briefly discussed in this section consider PTN Units 3 and 4 operations (under the EPU) combined with the environmental impacts from the proposed construction and operation of PTN Units 6 and 7.

It is important to note that submitting the COL application does not commit FPL to build two new nuclear units, and does not constitute approval of the proposal by the NRC. The COL application will be evaluated on its merits and after considering and evaluating the environmental and safety implications of the proposal, the NRC will decide whether to approve or deny the licenses. Environmental impacts of constructing and operating PTN Units 6 and 7 will depend on their actual design characteristics, construction practices, and power plant operations. These impacts will be assessed by the NRC in a separate National Environmental Policy Act (NEPA) document. The cumulative impacts presented in this EA may differ from those impacts assessed for the COL.

For some resource areas (e.g., air quality, water, aquatic, terrestrial resources, and threatened and endangered species), the contributory effect of ongoing actions within a region are regulated and monitored through a permitting process (e.g., NPDES and 401/404 permits under the Clean Water Act) under State or Federal authority. In these cases, impacts are managed as long as these actions are in compliance with their respective permits and conditions of certification.

Units 6 and 7 of the PTN site would be constructed on undeveloped land immediately south of PTN Units 3 and 4. The EPU modifications to PTN Units 3 and 4 are expected to be completed before the proposed PTN Units 6 and 7 are constructed.

Units 6 and 7 of the PTN site would have a closed-cycle cooling system utilizing cooling towers with makeup water from Biscayne Bay and treated wastewater from Miami-Dade County. Waste water discharges are expected to be disposed of by deep well injection. Impacts to water resources for PTN Units 3 and 4 and PTN Units 6 and 7 would occur separately, and any potential cumulative impacts would not be significantly greater than current operations.

Units 6 and 7of the PTN site transmission lines, and related infrastructure improvements would be constructed and operated according to Federal and State regulations, permit conditions, existing procedures, and established best management practices. Nevertheless, wildlife may be destroyed or displaced during land clearing for PTN Units 6 and 7. Less mobile animals, such as reptiles, amphibians, and small mammals, would incur greater mortality than more mobile animals, such as birds. Although undisturbed habitat would be available for displaced animals during construction, increased competition for available habitat may result in local population stresses. As construction activities end, habitats could be restored either naturally or through mitigation activities.

Terrestrial species and habitat could be affected by PTN Units 6 and 7 cooling system operations. As described in the Environmental Report for the new units, the primary source of makeup water would be treated waste water from the Miami-Dade Water and Sewer Department. If not enough reclaimed water is available to meet the needs of PTN Units 6 and 7, then seawater would be withdrawn from under Biscayne Bay via radial collector wells. Because of this situation, the operation of mechanical draft cooling towers can result in salt deposition (i.e., salt drift); a greater risk of avian collision mortality; and noise.

Land needed for the proposed PTN Units 6 and 7 has been surveyed for historical and archaeological sites. The survey identified no new or previously recorded historic or archaeological resources within or adjacent to the proposed site.

Socioeconomic impacts from the construction and operation of PTN Units 6 and 7 would occur several years after the EPU. The large construction and operation workforces combined with ongoing operation of PTN Units 3 and 4 under the EPU would have a noticeable effect on socioeconomic conditions in local communities from the increased demand for temporary and permanent housing, public services (e.g., public schools), and increased traffic.

Nonradiological Impacts Summary

As discussed above, the proposed EPU would not result in any significant nonradiological impacts. Table 1 summarizes the nonradiological environmental impacts of the proposed EPU at PTN Units 3 and 4.

TABLE 1—SUMMARY OF NONRADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use	The proposed EPU is not expected to cause a significant impact on land use conditions and aesthetic resources in the vicinity of the PTN.
Air Quality	The proposed EPU is not expected to cause a significant impact to air quality.
Water Use	The proposed EPU is not expected to cause impacts significantly greater than current operations. No significant impact on groundwater or surface water resources.
Aquatic Resources	The proposed EPU is not expected to cause impacts significantly greater than current operations. No significant impact to aquatic resources due to chemical or thermal discharges.
Terrestrial Resources	The proposed EPU is not expected to cause impacts significantly greater than current operations. No significant impact to terrestrial resources.
Threatened and Endangered Species	The proposed EPU would not cause impacts significantly greater than current operations. No significant impact to federally-listed species.
Historic and Archaeological Resources	No significant impact to historic and archaeological resources on site or in the vicinity of the PTN.
Socioeconomics	No significant socioeconomic impacts from EPU-related temporary increase in workforce.
Environmental Justice	No disproportionately high and adverse human health and environmental effects on minority and low-income populations in the vicinity of the PTN site.
Cumulative Impacts	The proposed EPU would not cause impacts significantly greater than current operations. To address potential cumulative impacts for water and ecological resources, a monitoring plan for the PTN site has been implemented. The State of Florida has authority to impose limits on nonradiological discharges to abate any significant hydrology and ecology impacts. The NRC staff has not identified any significant cumulative impacts associated with construction and operation of Units 6 and 7; however, the NRC will prepare a separate Environmental Impact Statement documenting the potential impacts associated with the construction and operation of Units 6 and 7.

Radiological Impacts

Radioactive Gaseous and Liquid Effluents and Solid Waste

The PTN uses waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and EPA radiation safety standards. The licensee's evaluation of plant operation at the proposed EPU conditions shows that no physical changes would be needed to the radioactive gaseous, liquid, or solid waste systems.

Radioactive Gaseous Effluents

The gaseous waste management systems include the radioactive gaseous system, which manages radioactive gases generated during the nuclear fission process. Radioactive gaseous wastes are principally activation gases and fission product radioactive noble gases resulting from process operations, including continuous degasification of systems, gases collected during system venting, gases used for tank cover gas, and gases generated in the radiochemistry laboratory. The licensee's evaluation determined that implementation of the proposed EPU would not significantly increase the inventory of carrier gases normally processed in the gaseous waste management system, since plant system functions are not changing and the volume inputs remain the same. The analysis also showed that the proposed

EPU would result in an increase in the equilibrium radioactivity in the reactor coolant, which in turn increases the radioactivity in the waste disposal systems and radioactive gases released from the plant. The bounding increases in effluent releases estimated by the licensee from the proposed EPU are 17.1 percent for noble gases, 17.6 percent for gaseous radionuclides with short half-lives, and 15.3 percent for tritium while a higher secondary side moisture carryover could result in a bounding increase of 25.3 percent in iodine releases.

The licensee's evaluation concluded that the proposed EPU would not change the radioactive gaseous waste system's design function and reliability to safely control and process the waste. The projected gaseous release following EPU would remain bounded by the values given in the FES for PTN Units 3 and 4. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive gaseous releases within the dose limits of 10 CFR 20.1302 and the as low as is reasonably achievable (ALARA) dose objectives in Appendix I to 10 CFR Part 50.

Radioactive Liquid Effluents

The liquid waste management system collects, processes, and prepares radioactive liquid waste for disposal. Radioactive liquid wastes include liquids from various equipment drains, floor drains, the chemical and volume control system, steam generator blowdown, chemistry laboratory drains, laundry drains, decontamination area drains and liquids used to transfer solid radioactive waste. The licensee's evaluation shows that the proposed EPU implementation would not significantly increase the inventory of liquid normally processed by the liquid waste management system. This is because the system functions are not changing and the volume inputs remain the same. The proposed EPU would result in a 15.3-percent increase in the equilibrium radioactivity in the reactor coolant which in turn would impact the concentrations of radioactive nuclides in the waste disposal systems.

Since the composition of the radioactive material in the waste and the volume of radioactive material processed through the system are not expected to significantly change, the current design and operation of the radioactive liquid waste system will accommodate the effects of the proposed EPU. The projected liquid effluent release following EPU would remain bounded by the values given in the FES for PTN Units 3 and 4. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive liquid releases within the dose limits of 10 CFR 20.1302 and ALARA dose standards in Appendix I to 10 CFR Part 50.

Radioactive Solid Wastes

Radioactive solid wastes include solids recovered from the reactor coolant systems, solids that come into contact with the radioactive liquids or gases, and solids used in the reactor coolant system operation. The licensee evaluated the potential effects of the proposed EPU on the solid waste management system. The largest volume of radioactive solid waste is low-level radioactive waste (LLRW), which includes sludge, oily waste, bead resin, spent filters, and dry active waste that result from routine plant operation, refueling outages, and routine maintenance. Dry active waste includes paper, plastic, wood, rubber, glass, floor sweepings, cloth, metal, and other types of waste generated during routine maintenance and outages.

The licensee manages LLRW contractually and continues to ship Class A, B, and C LLRW offsite for processing and disposal. EnergySolutions, Inc. (with a Class A disposal facility located in Clive, Utah) is currently under contract with FPL for the processing and disposal of Class A LLRW. Studsvik, Inc., is under contract with FPL for processing, storage, and disposal of Class B and C LLRW.

As stated by the licensee, the proposed EPU would not have a significant effect on the generation of radioactive solid waste volume from the primary reactor coolant and secondary side systems since the systems functions are not changing and the volume inputs remain consistent with historical generation rates. The waste can be handled by the solid waste management system without modification. The equipment is designed and operated to process the waste into a form that minimizes potential harm to the workers and the environment. Waste processing areas are monitored for radiation and there are safety features to ensure worker doses are maintained within regulatory limits. The proposed EPU would not generate a new type of waste or create a new waste stream. Therefore, the impact from the proposed EPU on the management of radioactive solid waste would not be significant.

Occupational Radiation Dose at EPU Conditions

The licensee stated that the in-plant radiation sources are expected to increase approximately linearly with the proposed increase in core power level. To protect the workers, the licensee's radiation protection program monitors radiation levels throughout the plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses will remain within the dose limits of 10 CFR Part 20 and ALARA.

In addition to the work controls implemented by the radiation protection program, permanent and temporary shielding is used throughout PTN Units 3 and 4 to protect plant personnel against radiation from the reactor and auxiliary systems containing radioactive material. The licensee determined that the current shielding design is adequate to offset the increased radiation levels that are expected to occur from the proposed EPU since:

- Conservative analytical techniques were used to establish the shielding requirements,
- Conservatism in the original design basis reactor coolant source terms used to establish the radiation zones, and
- Plant Technical Specification 3.4.8, which limits the reactor coolant concentrations to levels significantly below the original design basis source terms.

Based on the above, the staff concludes that the proposed EPU is not expected to significantly affect radiation levels within the plants and, therefore, there would not be a significant radiological impact to the workers.

Offsite Doses at EPU Conditions

The primary sources of offsite dose to members of the public from PTN Units 3 and 4 are radioactive gaseous and liquid effluents. The contribution of radiation shine from plant buildings and stored radioactive solid waste was evaluated by the licensee and found to be negligible. As previously discussed, operation at the proposed EPU conditions will not change the radioactive waste management systems' abilities to perform their intended functions. Also, there would be no change to the radiation monitoring system and procedures used to control the release of radioactive effluents in accordance with NRC radiation protection standards in 10 CFR Part 20 and Appendix I to 10 CFR Part 50.

Based on the above, the offsite radiation dose to members of the public would continue to be within NRC and

EPA regulatory limits and, therefore, would not be significant.

Spent Nuclear Fuel

Spent fuel from PTN Units 3 and 4 is stored in the plant's spent fuel pool and in dry casks in the Independent Spent Fuel Storage Installation. The PTN Units 3 and 4 are licensed to use uranium-dioxide fuel that has a maximum enrichment of 4.5 percent by weight uranium-235. Approval of the proposed EPU would increase the maximum fuel enrichment to 5 percent by weight uranium-235. The average fuel assembly discharge burnup for the proposed EPU is expected to be approximately 52,000 megawatt days per metric ton uranium (MWd/MTU) with no fuel pins exceeding the maximum fuel rod burnup limit of 62,000 MWd/MTU. The licensee's fuel reload design goals will maintain the fuel cycles within the limits bounded by the impacts analyzed in 10 CFR Part 51, Table S–3—Table of Uranium Fuel Cycle Environmental Data, and Table S–4—Environmental Impact of Transportation of Fuel and Waste to and from One Light-Water-Cooled Nuclear Power Reactor, as supplemented by NUREG–1437, Volume 1, Addendum1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Main Report, Section 6.3—Transportation Table 9.1, Summary of findings on NEPA issues for license renewal of nuclear power plants.'' Therefore, there would be no significant impacts resulting from spent nuclear fuel.

Postulated Design-Basis Accident Doses

Postulated design-basis accidents are evaluated by both the licensee and the NRC to ensure that PTN Units 3 and 4 can withstand normal and abnormal transients and a broad spectrum of postulated accidents without undue hazard to the health and safety of the public.

On June 25, 2009, the licensee submitted license amendment request (LAR) number 196 (LAR 196), Alternative Source Term to the NRC, to update its design-basis accident analysis. In LAR 196, the licensee requested NRC approval to use a set of revised radiological consequence analyses using the guidance in NRC's Regulatory Guide 1.183, *Alternative Radiological Source Terms* (AST) *for Evaluating Design Basis Accidents at Nuclear Power Reactors.* On June 25, 2010, the licensee submitted a supplement to LAR 196 to revise the radiological dose consequence analyses. The analyses for LAR 196 are applicable for the power level in the proposed EPU. The NRC evaluated the proposed changes in LAR 196 separately from the EPU.

In LAR 196, the licensee reviewed the various design-basis accident (DBA) analyses performed in support of the proposed EPU for their potential radiological consequences and concluded that the analyses adequately account for the effects of the proposed EPU. The licensee states that the results of the revised AST analysis were found to be acceptable with respect to the radiological consequences of postulated DBAs, since the calculated doses meet the exposure guideline values specified in 10 CFR 50.67 and General Design Criteria 19 in Appendix A of 10 CFR Part 50.

The results of the NRC's evaluation and conclusion approving the proposed changes submitted in LAR 196 are documented in a Safety Evaluation related to Amendment Nos. 244 and 240 for PTN Units 3 and 4, respectively (ADAMS Accession No. ML110800666)

Radiological Cumulative Impacts

The radiological dose limits for protection of the public and workers have been developed by the NRC and EPA to address the cumulative impact of acute and long-term exposure to radiation and radioactive material. These dose limits are specified in 10 CFR Part 20 and 40 CFR Part 190.

The cumulative radiation dose to the public and workers are required to be within the regulations cited above. The public dose limit of 25 millirem (0.25 millisieverts) in 40 CFR Part 190 applies to all reactors that may be on a site and also includes any other nearby nuclear power reactor facilities. There is no other nuclear power reactor or uranium fuel cycle facility located near PTN Units 3 and 4. The NRC staff reviewed several years of radiation dose data contained in the licensee's annual radioactive effluent release reports for PTN Units 3 and 4. The data demonstrate that the dose to members of the public from radioactive effluents is within the limits of 10 CFR Part 20 and 40 CFR Part 190. To evaluate the projected dose at EPU conditions for PTN Units 3 and 4, the NRC staff increased the actual dose data contained in the reports by 15 percent. The projected doses at EPU conditions remained within regulatory limits. Therefore, the NRC staff concludes that there would not be a significant cumulative radiological impact to members of the public from increased radioactive effluents from PTN Units 3 and 4 at the proposed EPU operation.

A COL application was submitted in June 2009 to the NRC to construct and operate two new AP1000 reactor plants on the PTN site designated as Units 6 and 7. The FPL radiological assessment of the radiation doses to members of the public from the proposed two new reactors concluded that the doses would be within regulatory limits. The staff expects continued compliance with regulatory dose limits during PTN Units 3 and 4 operations at the proposed EPU power level. Therefore, the staff concludes that the cumulative radiological impacts to members of the public from increased radioactive effluents from the combined operations of PTN Units 3 and 4 at EPU conditions and the proposed two new reactors would not be significant.

As previously discussed, the licensee has a radiation protection program that maintains worker doses within the dose limits in 10 CFR Part 20 during all phases of PTN Units 3 and 4 operations. The NRC staff expects continued compliance with NRC's occupational dose limits during operation at the proposed EPU power level. Therefore, the staff concludes that operation of PTN Units 3 and 4 at the proposed EPU levels would not result in a significant impact to the worker's cumulative radiological dose.

Radiological Impacts Summary

As discussed above, the proposed EPU would not result in any significant radiological impacts. Table 2 summarizes the radiological environmental impacts of the proposed EPU at PTN Units 3 and 4.

TABLE 2—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Radioactive Gaseous Effluents	Amount of additional radioactive gaseous effluents generated would be handled by the existing system.
Radioactive Liquid Effluents	Amount of additional radioactive liquid effluents generated would be handled by the existing system.
Occupational Radiation Doses	Occupational doses would continue to be maintained within NRC limits.
Offsite Radiation Doses	Radiation doses to members of the public would remain below NRC and EPA radiation protection standards.

TABLE 2—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS—Continued

Radioactive Solid Waste	Amount of additional radioactive solid waste generated would be handled by the existing system.
Spent Nuclear Fuel	The spent fuel characteristics will remain within the bounding criteria used in the impact analysis in 10 CFR Part 51, Table S–3 and Table S–4.
Postulated Design-Basis Accident Doses	Calculated doses for postulated design-basis accidents would remain within NRC limits.
Cumulative Radiological	Radiation doses to the public and plant workers would remain below NRC and EPA radiation protection standards.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (i.e., the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. However, if the EPU were not approved for PTN Units 3 and 4, other agencies and electric power organizations may be required to pursue other means, such as fossil fuel or alternative fuel power generation, to provide electric generation capacity to offset future demand. Construction and operation of such a fossil-fueled or alternative-fueled plant could result in impacts in air quality, land use, and waste management greater than those identified for the proposed EPU for PTN Units 3 and 4. Furthermore, the proposed EPU does not involve environmental impacts that are significantly different from those originally identified in the PTN Unit 3 or Unit 4 FES, and NUREG–1437, SEIS–5.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the PTN Unit 3 or Unit 4 FES.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the FDEP, SFWMD, Miami-Dade County, BNP, and FWCC regarding the environmental impact of the proposed action and specifically regarding the monitoring and mitigation plan that formed the basis of the Florida agencies recommending approval to the FDEP for the proposed EPU subject to the CoC during the State of Florida site certification process.

III. Finding of No Significant Impact

On the basis of the details provided in the EA, the NRC concludes that granting the proposed EPU license amendment is not expected to cause impacts significantly greater than current operations. Therefore, the proposed action of implementing the EPU for PTN Units 3 and 4 will not have a significant effect on the quality of the human environment because no significant permanent changes are involved and the temporary impacts are within previously disturbed areas at the site and the capacity of the plant systems. Accordingly, the NRC has determined it is not necessary to prepare an environmental impact statement for the proposed action.

Dated at Rockville, Maryland, this 27th day of March 2012.

For the Nuclear Regulatory Commission.

Jason C. Paige,

Project Manager, Plant Licensing Branch 2–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–7947 Filed 4–2–12; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2012–0078]

Biweekly Notice of Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 8, 2012, to March 21, 2012. The last biweekly notice was published on March 20, 2012 (77 FR 16271).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID 2012–0078.

You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID 2012–0078. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID 2012–0078 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID 2012–0078.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One

White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID 2012–0078 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held

would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E–Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents

created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Detroit Edison, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: December 20, 2011.

Description of amendment request: The proposed amendment would modify Technical Specifications requirements related to primary containment isolation instrumentation. The changes are in accordance with Nuclear Regulatory Commission approved Technical Specification Task Force (TSTF), Improved Standard Technical Specifications change TSTF–306, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The addition of the note that the penetration flow path may be unisolated under administrative control provides consistency with what is already allowed elsewhere in TSs. The isolation function of the TIP [Traversing In-core Probe] valves is mitigative, and does not create any increased possibility of an accident. Also, the operation of the manual shear valves is unaffected by this activity. The ability to manually isolate the TIP system by either the normal isolation ball valves or the shear valves would be unaffected by the inoperable instrumentation. The Required Actions and their associated Completion Times are not initiating conditions for any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed Change Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system. As a result no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Response: No.

The proposed change will not affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. The allowance to unisolate a penetration flow path will not have a significant effect on the margin of safety because the penetration flow path can be isolated manually, if needed. This change provides consistency with what is already allowed elsewhere in TSs. The option to isolate a TIP penetration will ensure the penetration will perform as designed in the accident analysis. The ability to manually isolate the TIP system is unaffected by the inoperable instrumentation. The proposed change does not impact any safety analysis assumptions or results.

Therefore, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bruce R. Masters, DTE Energy, General Council—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Acting Branch Chief: Shawn A. Williams.

Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 22, 2011.

Description of amendment request: The proposed amendment would revise the Operating License (OL) Condition 3.S to allow Boiling Water Reactor Vessels and Internal Project (BWRVIP)–139–A ''BWR Vessel and Internals Project Steam Dryer Inspection and Flaw Evaluation Guidelines'' to be the basis for future steam dryer monitoring and inspections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The amendment does not significantly increase the probability of an accident since it does not involve a change to any plant equipment that initiates a plant accident. The change affects the standard by which future steam dryer monitoring and structural integrity inspections are performed. The proposed standard has been approved for use by the NRC. The steam dryer is not an initiator or mitigator of any previously evaluated accidents. Maintaining structural integrity of the steam dryer ensures that systems and components that are credited in station safety analysis function as designed.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. The change affects the standard by which future steam dryer monitoring and structural integrity inspections are performed. The proposed standard has been approved for use by the NRC. No new or different types of equipment will be installed and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment affects the standard by which future steam dryer monitoring and structural integrity inspections are performed. The proposed standard has been approved for use by the NRC. The change does not affect design codes or design margins. The change provides for monitoring and inspection of the steam dryer to ensure the dryer maintains its integrity and does not affect safety related equipment. This ensures analyzed safety margins are maintained.

Therefore, operation of VY in accordance with the proposed amendment will not involve a significant reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400

Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: February 1, 2012.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.7.A.6.b to allow the drywell to suppression chamber leak rate test to be performed once per operating cycle. No changes to test acceptance criteria are proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not significantly increase the probability or consequences of an accident since it does not involve a modification to any plant equipment or affect how plant systems or components are operated. No design functions or design parameters are affected by the proposed amendment. The proposed amendment involves the scheduling of a surveillance requirement so that the affected surveillance can be done anytime during the operating cycle. The proposed amendment does not impact the ability of the vacuum breakers to function in the event of a LOCA [loss-of-coolant accident] during the test. Performance of the surveillance on line versus during a refuel outage does not pose a significant increase in risk. No changes to the acceptance criteria for the surveillance are proposed.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves the schedule for performing a TS surveillance requirement. The proposed change does not change the method by which any safety-related system performs its function. No new or different types of equipment will be installed and the test will be performed within the bounds of the TS requirements. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. The proposed amendment involves the scheduling of a surveillance requirement so that the affected surveillance can be done anytime during the operating cycle. No changes to acceptance criteria for the surveillance are proposed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment involves the scheduling of a surveillance requirement so that the affected surveillance can be done anytime during the operating cycle. No changes to the acceptance criteria for the surveillance are proposed. The proposed change ensures that the safety functions of the pressure suppression chamber-drywell vacuum breakers continue to be fulfilled by performing the surveillance. The proposed amendment does not involve a physical modification of the plant and does not change the design or function of any component or system.

Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: March 5, 2012.

Description of amendment request: The proposed amendment would revise VY Renewed Facility Operating License Condition (RFOLC) 3.P to clarify that the programs and activities described in the Updated Final Safety Analysis Report (UFSAR) supplement submitted pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 54.21(d), as revised during the license renewal application process, may be changed without prior NRC approval provided the requirements of 10 CFR 50.59 have been previously satisfied. Additionally, RFOLC 3.Q is revised to clarify that the programs and activities, identified in Appendix A of Supplement 2 to NUREG–1907 and the UFSAR supplement, to be completed before the period of extended operation are completed on schedule and the NRC is to be notified upon completion of implementation of these activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The amendment does not significantly increase the probability of an accident since it does not involve a change to any plant equipment that initiates a plant accident. The change clarifies RFOLC 3.P and 3.Q. The license conditions deal with administrative controls over information contained in the Updated Final Safety Analysis Report (UFSAR) supplement. The proposed changes are administrative and the license conditions are not an initiator or mitigator of any previously evaluated accidents.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since it does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. The license conditions deal with administrative controls over information contained in the UFSAR supplement. No new or different types of equipment will be installed and the basic operation of installed equipment is unchanged.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not affect design codes or design margins. The change clarifies RFOLC 3.P and 3.Q, is administrative in nature and does not have the ability to affect analyzed safety margins.

Therefore, operation of VY in accordance with the proposed amendment will not involve a significant reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 1, 2012.

Description of amendment request: The proposed amendment would make miscellaneous changes to the Technical Specifications (TS) and Facility Operating License (FOL) including: (1) Correction of typographical errors; (2) deletion of historical requirements that have expired; (3) corrections of errors or omissions from previous license amendment requests; and (4) updating of component lists to reflect current plant design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with Nuclear Regulatory Commission (NRC) staff edits in square brackets:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to TS and the FOL are administrative in nature that correct typographical errors, or delete historical requirements that have expired. These changes do not affect the intent of any TS requirements.

The proposed changes do not have any impact on structures, systems and components (SSCs) of the plant, and [have] no effect on plant operations. The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. The proposed changes to the technical specifications do not result in the addition or removal of any equipment but update component lists to reflect equipment that was previously removed or abandoned.

Therefore, these proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to TS and the FOL are administrative in nature that correct typographical errors, or delete historical requirements that have expired. These changes do not affect the intent of any TS requirements.

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism.

Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to TS and the FOL are editorial in nature that correct typographical errors, or delete historical requirements that have expired. These changes do not affect the intent of any TS requirements.

The proposed changes incorporate corrections to the TS and FOL and result in improved accuracy of these licensing documents. There is no change to any design basis, licensing basis or safety limit, and no change to any parameters; consequently no safety margins are affected.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, and with the changes noted above in square brackets, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Meena K. Khanna.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: March 8, 2012.

Description of amendment request: The amendment allows a one-time temporary extension of 24 hours to the Completion Time for Condition C in the Susquehanna Steam Electric Station (SSES) Unit 2 Technical Specification (TS) 3.8.7, ''Distribution Systems-Operating,'' to allow a Unit 1 4160 V subsystem to be de-energized and removed from service for 96 hours to perform modifications on the bus. It also allows a one-time temporary extension of 24 hours to the Completion Time for Condition A in SSES Unit 2 TS 3.7.1, ''Plant Systems-RHRSW [residual heat removal service water system] and UHS [ultimate heat sink],'' to allow the UHS spray array and spray array bypass valves associated with applicable division RHRSW, and in Condition B, the applicable division Unit 2 RHRSW subsystem, to be inoperable for 96 hours during the Unit 1 4160 V bus breaker control logic modifications.

Date of publication of individual notice in ***Federal Register:*** March 16, 2012 (77 FR 15814)

Expiration date of individual notice: Comment period, April 16, 2012; Hearing period, May 15, 2012.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance

with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: June 30, 2011, as supplemented by letters dated July 11, 2011, January 12, 2012, and February 1, 2012.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.4.13, ''RCS [Reactor Coolant System] Operational LEAKAGE,'' TS 5.5.9, ''Steam Generator (SG) Program,'' and TS 5.6.8, ''Steam Generator (SG) Tube Inspection Report.'' Specifically, the amendments revised the TSs to accomplish the following objectives: permanently exclude portions of a steam generator (SG) tube below the top of the SG tubesheet from periodic SG tube inspections and plugging, permanently reduce the primary-to-secondary leakage limit, and permanently implement reporting requirement changes that had been previously established on a one-cycle basis.

Date of issuance: March 12, 2012.

Effective date: As of the date of issuance and shall be implemented prior to entering the applicable Modes of the affected TS at the completion of the outage.

Amendment Nos.: Unit 1—267 and Unit 2—263.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** January 19, 2012 (77 FR 2766).

The supplemental letters dated July 11, 2011, January 12, 2012, and February 1, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration (NSHC) determination.

The Commission's related evaluation of the amendments and final NSHC determination are contained in a Safety Evaluation dated March 12, 2012.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: June 2, 2011, as supplemented on November 10, 2011.

Brief description of amendments: The amendments revise the Technical Specifications for each unit by changing the method of calculating core reactivity for the purpose of performing the reactivity anomaly surveillance at Limerick Generating Station, Units 1 and 2. The change allows performance of the surveillance based on a comparison of predicted to actual (monitored) core reactivity. The reactivity anomaly verification was previously determined by a comparison of predicted versus actual control rod density.

Date of issuance: March 14, 2012.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 207 and 168.

Facility Operating License Nos. NPF–39 and NPF–85. These amendments revised the license and the technical specifications.

Date of initial notice in ***Federal Register:*** August 9, 2011 (76 FR 48911).

The supplement dated November 10, 2011, clarified the application, did not expand the scope of the application as originally noticed, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in Safety Evaluation dated March 14, 2012.

No significant hazards consideration comments received: No.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Meena Khanna.

Exelon Generation Company, LLC, Docket No. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: June 7, 2011, as supplemented by letters dated. September 21, 2011, November 2, 2011, and January 9, 2012.

Brief description of amendment: The amendment revises the value of the single recirculation loop operation (SLO) safety limit minimum critical power ratio (SLMCPR) in Technical Specifications Section 2.1.1, ''Reactor Core SLs [Safety Limits].'' Specifically, the revision replaces the current SLO SLMCPR requirement for QCNPS Unit 1 with a new SLMCPR requirement. The revision is necessary because of errors that were discovered in the Westinghouse McSLAP computer code that resulted in a non-conservative SLO SLMCPR.

Date of issuance: March 8, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 250.

Renewed Facility Operating License Nos. DPR–29: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** August 16, 2011 (72 FR 50762).

The September 21, 2011, November 2, 2011, and January 9, 2012, supplements contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 12, 2012.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendment: November 22, 2011, as supplemented by letter dated January 9, 2012.

Brief description of amendment: The amendment revises the value of the single recirculation loop operation (SLO) and dual recirculation loop operation (DLO) safety limit minimum critical power ratio (SLMCPR) in Technical Specifications Section 2.1.1, ''Reactor Core SLs [Safety Limits].'' Specifically, the revision replaces the current SLO and DLO SLMCPR

requirement for QCNPS Unit 2 with a new SLMCPR requirement. The revision is necessary because of errors that were discovered in the Westinghouse McSLAP computer code that resulted in non-conservative SLMCPR.values.

Date of issuance: March 8, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 245.

Renewed Facility Operating License Nos. DPR–30: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** January 3, 2012 (77 FR 140).

The January 9, 2012, supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 8, 2012.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of application for amendment: May 27, 2011.

Brief description of amendment: The amendments revise Technical Specifications (TSs) associated with replacing sodium hydroxide with sodium tetraborate as a chemical additive for containment sump pH control following a loss-of-coolant accident at BVPS–1. Due to common TSs for BVPS–1 and 2, administrative changes were made to BVPS–2 license to reflect the BVPS–1 changes.

Date of issuance: March 14, 2012.

Effective date: As of the date of issuance and shall be implemented prior to achieving Mode 4 during startup from the BVPS–1 refueling outage in the spring of 2012.

Amendment Nos.: 289 and 176.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revise the Licenses and TSs.

Date of initial notice in ***Federal Register:*** January 10, 2012 (77 FR 1518).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2012.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 23rd day of March 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–7676 Filed 4–2–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of April 2, 9, 16, 23, 30, May 7, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 2, 2012

Tuesday April 3, 2012

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Cindy Flannery, 301–415–0223).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 9, 2012—Tentative

Tuesday, April 10, 2012

9 a.m. Briefing on the Final Report of the Blue Ribbon Commission on America's Nuclear Future (Public Meeting) (Contact: Alicia Mullins, 301–492–3351).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 16, 2012—Tentative

There are no meetings scheduled for the week of April 16, 2012.

Week of April 23, 2012—Tentative

Tuesday, April 24, 2012

9 a.m. Briefing on Part 35 Medical Events Definitions—Permanent Implant Brachytherapy (Contact: Michael Fuller, 301–415–0520).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 30, 2012—Tentative

Monday, April 30, 2012

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting) (Contact: Kristin Davis, 301–492–2208).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of May 7, 2012—Tentative

Friday, May 11, 2012

9 a.m. Briefing on Potential Medical Isotope Production Licensing Actions (Public Meeting) (Contact: Jessie Quichocho, 301–415–0209).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: March 29, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–8077 Filed 3–30–12; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export Radioactive Waste

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within

thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E–Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this export license application follows.

NRC EXPORT LICENSE APPLICATION

[Description of Material]

Name of applicant, date of application date received application no. docket No.	Material type	Total quantity	End use	Country from
Perma-Fix Northwest Richland, Inc., February 14, 2012, February 16, 2012, XW019, 11005986.	Incinerated radioactive waste in the form of ash and non-conforming material.	A fraction of 500 tons of radioactive waste as contaminated ash and non-conforming materials resulting from the processing of contaminated material imported under NRC license IW031.	Return for storage or disposal by a licensed facility in Mexico.	Mexico.

For the Nuclear Regulatory Commission.

Dated this 28th day of March 2012 at Rockville, Maryland.

Stephen Dembek,

Acting Deputy Director, Office of International Programs.

[FR Doc. 2012–7946 Filed 4–2–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this import license application follows.

NRC IMPORT LICENSE APPLICATION

[Description of material]

Name of applicant Date of application Date received application No. docket No.	Material type	Total quantity	End use	Country from
Perma-Fix Northwest Richland, Inc., February 14, 2012, February 16, 2012, IW031, 11005985.	Radioactive waste consisting of various radioactively contaminated materials for thermal destruction.	Up to 500 tons of combustible and noncombustible materials. Total combined activity level for all radionuclides not to exceed 17.3 TBq. Special nuclear material not to exceed 350 grams U-235. Source material not to exceed 5000 kilograms.	Thermal destruction for volume reduction at Perma-Fix Northwest in Richland, WA. The resultant ash and non-incinerable/non-conforming material will be returned to Mexico under XW019.	Mexico.

For the Nuclear Regulatory Commission.

Dated this 28th day of March 2012 at Rockville, Maryland.

Stephen Dembek,

Acting Deputy Director, Office of International Programs.

[FR Doc. 2012–7945 Filed 4–2–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 5, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, April 5, 2012 will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
An adjudicatory matter; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: March 29, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8063 Filed 3–30–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 66667; March 28, 2012]

Securities Exchange Act of 1934; In the Matter of the NASDAQ Stock Market LLC; Order Granting Petition for Review and Scheduling Filing of Statements

Pursuant to Rule 431 of the Rules of Practice,[1] it is *ordered* that the petition of The NASDAQ Stock Market LLC for review of the order disapproving by delegated authority File No. SR–NASDAQ–2011–010[2] is granted.

It is ordered, pursuant to Rule 431 that any party or other person may file a statement in support of or in opposition to the action made by delegated authority on or before April 18, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–7901 Filed 4–2–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 201.431.

[2] *See* Securities Exchange Act Release No. 65362 (September 20, 2011), 76 FR 59466 (September 26, 2011).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66669; File No. SR–NYSEArca–2012–21]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating To the Listing and Trading of the First Trust North American Infrastructure Fund Under NYSE Arca Equities Rule 8.600

March 28, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 13, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): First Trust North American Infrastructure Fund. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the shares (''Shares'') of the First Trust North American Infrastructure Fund (''Fund'') under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[3] The Shares will be offered by First Trust Exchange-Traded Fund IV (''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.[4] The investment adviser to the Fund will be First Trust Advisors L.P. (''Adviser'' or ''First Trust''). Energy Income Partners LLC will serve as investment sub-adviser to the Fund (''Sub-Adviser'') and provide day-to-day portfolio management of the Fund. First Trust Portfolios L.P. (''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. Bank of New York Mellon (''Administrator'' or ''BNY'') will serve as administrator, custodian, and transfer agent for the Fund.[5]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[6] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In addition, the Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

According to the Registration Statement, the Fund's investment objective is to seek total return with an emphasis on current distributions and dividends paid to shareholders. Under normal market conditions,[7] the Fund will invest at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in exchange-traded equity securities of companies domiciled in the United States or Canada and deemed to be engaged in the energy infrastructure segment of the energy and utilities sectors. Equity securities include common stocks; preferred securities; warrants to purchase common stocks or preferred securities; securities convertible into common stocks or preferred securities; and other securities with equity characteristics. Such securities may include depositary receipts, master limited partnerships (''MLPs''), MLP I-shares (''I–Shares'') (as described below), MLP subordinated units (as described below), securities of pipeline and power utility companies, and securities of Canadian energy infrastructure companies and Canadian

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[4] The Trust is registered under the 1940 Act. On July 19, 2011, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333–174332 and 811–22559) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812–13477) (''Exemptive Order'').

[5] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (order approving listing of AdviserShares WCM/BNY Mellon Focused Growth ADR ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing of Cambria Global Tactical ETF).

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

Energy Infrastructure Trusts[8] (''CEITs''). According to the Registration Statement, the Sub-Adviser's priority will be to focus on steady fee-for-service income and will limit the cyclical energy exposure of the portfolio in order to reduce the volatility of returns.

The Fund may invest in U.S. dollar-denominated, exchange-listed depositary receipts and U.S. dollar-denominated foreign (primarily Canadian) equity securities.[9] The Fund's investments may include American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs''), European Depositary Receipts (''EDRs'') or other depositary receipts (collectively ''Depositary Receipts''), or New York Shares or Global shares.[10]

The Fund may invest in MLPs, which are limited partnerships whose shares (or common units) are listed and traded on a U.S. securities exchange. To qualify to be treated as a partnership for federal income tax purposes, such an MLP must receive at least 90% of its income from qualifying sources such as natural resource activities. Natural resource activities include the exploration, development, mining, production, processing, refining, transportation, storage, and marketing of mineral or natural resources.[11]

The Fund may invest in Energy MLPs, which can generally be classified as Midstream MLPs, Propane MLPs, and Coal MLPs.

Midstream MLP natural gas services include the treating, gathering, compression, processing, transmission, and storage of natural gas and the transportation, fractionation, and storage of natural gas liquids (''NGLs'') (primarily propane, ethane, butane, and natural gasoline). Midstream MLP crude oil services include the gathering, transportation, storage, and terminalling of crude oil. Midstream MLP refined petroleum product services include the transportation (usually via pipelines, barges, rail cars, and trucks), storage, and terminalling of refined petroleum products (primarily gasoline, diesel fuel, and jet fuel) and other hydrocarbon by-products. Midstream MLPs may also operate ancillary businesses, including the marketing of the products and logistical services.

Propane MLP services include the distribution of propane to homeowners for space and water heating and to commercial, industrial, and agricultural customers. Propane serves approximately 3% of the household energy needs in the United States, largely for homes beyond the geographic reach of natural gas distribution pipelines. Volumes are weather dependent, and a majority of annual cash flow is earned during the winter heating season (October through March).

Coal MLP services include the owning, leasing, managing, production, and sale of coal and coal reserves. Electricity generation is the primary use of coal in the United States. Demand for electricity and supply of alternative fuels to generators are the primary drivers of coal demand.

The Fund may invest in MLP subordinated units, which are typically issued by MLPs to their original sponsors, such as their founders, corporate general partners of MLPs, entities that sell assets to the MLP, and institutional investors.

The Fund may invest in I–Shares, which represent an ownership interest issued by an affiliated party of an MLP. The MLP affiliate uses the proceeds from the sale of I–Shares to purchase limited partnership interests in the MLP in the form of i-units. I-units have similar features as MLP common units in terms of voting rights, liquidation preference, and distributions. However, rather than receiving cash, the MLP affiliate receives additional i-units in an amount equal to the cash distributions received by MLP common units. Similarly, holders of I–Shares will receive additional I–Shares, in the same proportion as the MLP affiliates' receipt of i-units, rather than cash distributions. I–Shares themselves have limited voting rights, which are similar to those applicable to MLP common units. I–Shares are listed and traded on the New York Stock Exchange LLC (''NYSE'') and NYSE Amex LLC.

The Fund may invest in securities of other U.S. and Canadian-listed and traded open-end or closed-end investment companies, including exchange-traded funds that are registered under the 1940 Act (''ETFs''), such as ETFs listed on the Exchange under NYSE Arca Equities Rules 5.2(j)(3) and 8.600, that invest primarily in securities of the types in which the Fund may invest directly. The Fund also may invest in other types of U.S. exchange-traded products, such as exchange traded notes (''ETNs'') and exchange-traded pooled investment vehicles (collectively, with ETNs, ''Underlying ETPs'').[12]

The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by such ETFs and their sponsors from the Commission. Securities of other investment companies may be leveraged; such investments will not be

[8] CEITs are Canadian trusts that own or invest in companies engaged in activities in the energy infrastructure sector, including the exploration, mining, production, processing, transportation and storage of energy-related resources. According to the Registration Statement, an investment in units of CEITs involves risks which differ from an investment in common stock of a corporation. CEITs generally pass revenue on to unit holders rather than reinvesting in the business, which may lead to the sacrifice of potential growth. CEITs generally do not guarantee minimum distributions or return of capital. If the assets underlying a CEIT do not perform as expected, the CEIT may reduce or eliminate distributions. The declaration of such distributions generally depends upon various factors, including the operating performance and financial condition of the CEITs and general economic conditions.

[9] The foreign equity securities in which the Fund may invest, including any Depositary Receipts (as defined herein) and/or New York Shares and Global shares, as described herein, will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. *See* note 27, *infra.*

[10] According to the Registration Statement, ADRs are receipts typically issued by an American bank or trust company that evidence ownership of underlying securities issued by a foreign corporation. EDRs are receipts issued by a European bank or trust company evidencing ownership of securities issued by a foreign corporation. New York Shares are typically issued by a company incorporated in the Netherlands and represent a direct interest in the company. GDRs are receipts issued throughout the world that evidence a similar arrangement. ADRs, EDRs, and GDRs may trade in foreign currencies that differ from the currency the underlying security for each ADR, EDR, or GDR principally trades in. Generally, ADRs and New York Shares, in registered form, are designed for use in the U.S. securities markets. EDRs, in registered form, are used to access European markets. GDRs, in registered form, are traded both in the United States and in Europe and are designed for use throughout the world. Global shares are the actual (ordinary) shares of a non-U.S. company which trade both in the home market and the United States. Global shares are represented by the same share certificate in the United States and the home market. Separate registrars in the United States and the home country are maintained. In most cases, purchases occurring on a U.S. exchange would be reflected on the U.S. registrar. Global shares may also be eligible to list on exchanges in addition to the United States and the home country.

[11] According to the Registration Statement, MLPs generally have two classes of owners, the general partner and limited partners. The general partner, which is generally a major energy company, investment fund, or the management of the MLP, typically controls the MLP through a 2% general partner equity interest in the MLP plus common units and subordinated units. Limited partners own the remainder of the partnership, through ownership of common units, and have a limited role in the partnership's operations and management.

[12] Underlying ETPs, which will be listed on a national securities exchange, include the following: Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); and closed-end funds.

used to enhance leverage and will be consistent with the Fund's investment objective.

Under normal market conditions, the Fund will invest substantially all of its assets to meet its investment objective. The Fund may invest the remainder of its assets in securities with maturities of less than one year or cash equivalents, or it may hold cash, as described below. The percentage of the Fund invested in such holdings will vary and depend on several factors, including market conditions.

Other Investments

Cash Equivalents and Short-Term Investments

According to the Registration Statement, for temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in securities with maturities of less than one year or cash or cash equivalents. The Fund may adopt a defensive strategy when the portfolio managers believe securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances. The Fund may, without limit as to percentage of assets, purchase U.S. Government securities or short-term debt securities to keep cash on hand fully invested or for temporary defensive purposes. Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Group (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's''), or Fitch, Inc. (''Fitch'') and having a maturity of one year or less.

According to the Registration Statement, short-term debt securities are defined to include, without limitation, the following:

1. U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities, as described further in the Registration Statement.

2. Certificates of deposit issued against funds deposited in a bank or savings and loan association.

3. Bankers' acceptances, which are short-term credit instruments used to finance commercial transactions.

4. Repurchase agreements, which involve purchases of debt securities.[13]

5. Bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest. There may be penalties for the early withdrawal of such time deposits, in which case the yields of these investments will be reduced.

6. Commercial paper, which are short-term unsecured promissory notes. The Fund will not invest in any master demand notes.

The use of temporary investments will not be a part of a principal investment strategy of the Fund. The Fund may invest in shares of money market funds to the extent permitted by the 1940 Act.

Investments in Derivatives

In accordance with the Exemptive Order, the Fund may invest up to 35% of its net assets in futures (''Futures'' or ''Futures Contracts''), interest rate swaps, total return swaps, non-U.S. currency swaps, credit default swaps, options, and other derivative instruments to seek to enhance return, to hedge some of the risks of their investments in securities, as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of their investments to more closely approximate those of the markets in which they invest), to manage cash flows, to limit exposure to losses due to changes to non-U.S. currency exchange rates, or to preserve capital. Notwithstanding the Exemptive Order, the Fund, under normal market conditions, will not invest more than 20% of its net assets in such instruments. In connection with hedging activities in which the Fund may engage, First Trust may cause the Fund to utilize a variety of financial instruments, including options, forward contracts, Futures Contracts, and options on Futures Contracts to attempt to hedge the Fund's holdings.[14] The use of Futures is not a part of a principal investment strategy of the Fund.[15]

The Fund may use derivative investments to hedge against interest rate and market risks. The Fund may engage in various interest rate and currency hedging transactions, including buying or selling options or entering into other transactions including forward contracts, swaps and other derivatives transactions. The Fund may also engage in certain transactions intended to hedge its exposure to currency risks due to foreign currency denominated investments. The Fund may sell covered calls on equity positions in the portfolio in order to enhance its income.

The Fund may purchase stock index options, sell stock index options in order to close out existing positions, and/or write covered options on stock indices for hedging purposes. Stock index options are put options and call options on various stock indices. The Fund may enter into Futures Contracts, including index Futures as a hedge against movements in the equity markets, in order to hedge against changes on securities held or intended to be acquired by the Fund or for other purposes permissible under the Commodity Exchange Act (''CEA'').[16] The Fund's hedging may include sales of Futures as an offset against the effect of expected declines in stock prices and purchases of Futures as an offset against the effect of expected increases in stock prices. The Fund will not enter into Futures Contracts which are prohibited under the CEA and will, to the extent required by regulatory authorities, enter only into Futures Contracts that are

[13] In such an action, at the time the Fund purchases the security, it will simultaneously agree to resell and redeliver the security to the seller, who also simultaneously will agree to buy back the security at a fixed price and time. The Fund may enter into repurchase agreements only with respect to obligations of the U.S. Government, its agencies, or instrumentalities; certificates of deposit; or bankers acceptances in which the Fund may invest. In addition, the Fund may only enter into repurchase agreements where the market value of the purchased securities/collateral equals at least 100% of principal including accrued interest and is marked-to-market daily. The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by First Trust to present minimal credit risks in accordance with criteria established by the Trust's Board of Trustees (''Board''). First Trust will review and monitor the creditworthiness of such institutions. First Trust will monitor the value of the collateral at the time the action is entered into and at all times during the term of the repurchase agreement. First Trust will do so in an effort to determine that the value of the collateral always equals or exceeds the agreed-upon repurchase price to be paid to the Fund.

[14] According to the Registration Statement, the Trust has filed a notice of eligibility for exclusion from the definition of the term ''commodity pool operator'' with the National Futures Association. The Fund will not enter into Futures and options transactions if the sum of the initial margin deposits and premiums paid for unexpired options exceeds 5% of the Fund's total assets.

[15] Hedging or derivative instruments on securities generally will be used to hedge against price movements in one or more particular securities positions that the Fund owns or intends to acquire. Such instruments may also be used to ''lock-in'' realized but unrecognized gains in the value of portfolio securities. Hedging instruments on stock indices, in contrast, generally are used to hedge against price movements in broad equity market sectors in which the Fund has invested or expects to invest. The use of hedging instruments is subject to applicable regulations of the Commission, the several options and Futures exchanges upon which they are traded, the Commodity Futures Trading Commission (''CFTC'') and various state regulatory authorities.

[16] 7 U.S.C. 1 et seq.

traded on national Futures exchanges and are standardized as to maturity date and underlying financial instrument. The principal interest rate Futures exchanges in the United States are the Chicago Board of Trade and the Chicago Mercantile Exchange.

The Fund may also purchase or write put and call options on Futures Contracts and enter into closing transactions with respect to such options to terminate an existing position.

The Fund may use options on Futures Contracts in connection with hedging strategies. Generally, these strategies would be applied under the same market and market sector conditions in which the Fund uses put and call options on securities or indices.

The Fund may invest in companies that are considered to be ''passive foreign investment companies'' (''PFICs''), which are generally certain non-U.S. corporations that receive at least 75% of their annual gross income from passive sources (such as interest, dividends, certain rents and royalties or capital gains) or that hold at least 50% of their assets in investments producing such passive income.[17]

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to securities issued by energy infrastructure companies or obligations issued or guaranteed by the U.S. Government, its agencies, or instrumentalities. Accordingly, the Fund will concentrate its investments in energy infrastructure companies.[18]

The Fund may hold illiquid securities (*i.e.,* securities that are not readily marketable).[19] For purposes of this restriction, illiquid securities include, but are not limited to, restricted securities (securities the disposition of which is restricted under the federal securities laws), securities that may only be resold pursuant to Rule 144A under the Securities Act of 1933, and repurchase agreements with maturities in excess of seven days. However, the Fund will not hold illiquid securities if, as a result, such securities would comprise more than 15% of the value of the Fund's net assets.

The Fund intends to qualify annually and to elect to be treated as a regulated investment company (''RIC'') under the Internal Revenue Code of 1986, as amended.[20]

Creations and Redemptions

The Fund will issue and redeem Shares on a continuous basis, at net asset value (''NAV''), only in large specified blocks each consisting of 50,000 Shares (each such block of Shares, called a ''Creation Unit''). Each group of Creation Units is referred to as a ''Creation Unit Aggregation.'' The Creation Units will be issued and redeemed for securities in which the Fund invests, cash or both securities and cash.

The consideration for purchase of Creation Unit Aggregations of the Fund may consist of (i) cash in lieu of all or a portion of the Deposit Securities, as defined below, and/or (ii) a designated portfolio of equity securities determined by First Trust or the Sub-Adviser—the ''Deposit Securities''—per each Creation Unit Aggregation (''Fund Securities'') and generally an amount of cash—the ''Cash Component.'' Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of the Fund.

BNY, through the National Securities Clearing Corporation (''NSCC'') (as discussed below), will make available on each business day, prior to the opening of business of the NYSE (currently 9:30 a.m., Eastern time (''E.T.'')), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, BNY, through the NSCC, also will make available on each business day, the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit Aggregation of the Fund.

All orders to create Creation Unit Aggregations must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (''Closing Time'') (ordinarily 4 p.m., E.T.) in each case on the date such order is placed in order for creation of Creation Unit Aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Fund Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through the transfer agent and only on a business day. The Fund will not redeem Shares in amounts less than Creation Unit Aggregations. Beneficial owners must accumulate enough Shares in the secondary market to constitute a Creation Unit Aggregation in order to have such Shares redeemed by the Trust. With respect to the Fund, BNY, through the NSCC, will make available prior to the opening of business on the NYSE (currently 9:30 a.m., E.T.) on each business day, the identity of the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as described below) on that day. Fund Securities received on redemption may not be

[17] *See* note 9, *supra,* and note 27, *infra.*

[18] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[19] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[20] 26 U.S.C. 851. According to the Registration Statement, to qualify for the favorable U.S. federal income tax treatment generally accorded to RICs, the Fund must, among other things, (a) derive in each taxable year at least 90% of its gross income from dividends, interest, payments with respect to securities loans and gains from the sale or other disposition of stock, securities or foreign currencies or other income derived with respect to its business of investing in such stock, securities or currencies, or net income derived from interests in certain publicly traded partnerships; (b) diversify its holdings so that, at the end of each quarter of the taxable year, (i) at least 50% of the market value of the Fund's assets is represented by cash and cash items (including receivables), U.S. Government securities, the securities of other RICs and other securities, with such other securities of any one issuer generally limited for the purposes of this calculation to an amount not greater than 5% of the value of the Fund's total assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets is invested in the securities (other than U.S. Government securities or the securities of other RICs) of any one issuer, or two or more issuers which the Fund controls which are engaged in the same, similar or related trades or businesses, or the securities of one or more of certain publicly traded partnerships; and (c) distribute at least 90% of its investment company taxable income (which includes, among other items, dividends, interest and net short-term capital gains in excess of net long-term capital losses) and at least 90% of its net tax-exempt interest income each taxable year. There are certain exceptions for failure to qualify if the failure is for reasonable cause or its de minimis, and certain action is taken and certain tax payments are made by the Fund.

identical to Deposit Securities that are applicable to creations of Creation Unit Aggregations.

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit Aggregation generally will consist of Fund Securities—as announced on the business day of the request for redemption received in proper form—plus or minus cash in an amount equal to the difference between the NAV of the Fund Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less the applicable redemption transaction fee as described in the Registration Statement and, if applicable, any operational processing and brokerage costs, transfer fees, or stamp taxes.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[21] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[22] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. to 4 p.m., E.T.) on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[23]

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's Web site: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the Fund.

In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors during the Core Trading Session.[24] The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day. The PIV should not be viewed as a ''real-time'' update of the NAV per Share of the Fund because the PIV may not be calculated in the same manner as the NAV, which is computed once a day, generally at the end of the business day. The price of a non-U.S. security that is primarily traded on a non-U.S. exchange shall be updated, using the last sale price, every 15 seconds throughout the trading day, provided that, upon the closing of such non-U.S. exchange, the closing price of the security, after being converted to U.S. dollars, will be used. Furthermore, in calculating the PIV of the Fund's Shares, exchange rates may be used throughout the day (9 a.m. to 4:15 p.m., E.T.) that may differ from those used to calculate the NAV per Share of the Fund and, consequently, may result in differences between the NAV and the PIV.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The intra-day, closing, and settlement prices of the portfolio securities will also be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

The Fund's NAV will be determined as of the close of trading (normally 4 p.m., E.T.) on each day the NYSE is open for business. NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust's Board or its delegate.[25]

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule

[21] 17 CFR 240.10A–3.

[22] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[23] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[24] Currently, it is the Exchange's understanding that several major market data vendors widely disseminate PIVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

[25] The Fund's investments will be valued at market value or, in the absence of market value with respect to any portfolio securities, at fair value in accordance with valuation procedures adopted by the Board and in accordance with the 1940 Act.

change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[26] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[27] As noted above, the equity securities in which the Fund will invest will trade in markets that are ISG members or are parties to comprehensive surveillance sharing agreements with the Exchange.[28]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[29] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Adviser and Sub-Adviser have implemented a fire wall with respect to their respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Under normal market conditions, the Fund will invest at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in exchange-traded equity securities of companies domiciled in the United States or Canada and deemed to be engaged in the energy infrastructure segment of the energy and utilities sectors. The Fund, under normal market conditions, will not invest more than 20% of its net assets in futures, interest rate swaps, total return swaps, non-U.S. currency swaps, credit default swaps, options, and other derivative instruments. While the Fund may invest in securities of other investment companies that are leveraged, such investments will not be use to enhance leverage and will be consistent with the Fund's investment objective. The Fund will not hold illiquid securities if, as a result, such securities would comprise more than 15% of the value of the Fund's net assets. The equity securities in which the Fund will invest will trade in markets that are ISG members or are parties to comprehensive surveillance sharing agreements with the Exchange.

[26] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[27] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[28] *See* note 9, *supra.*

[29] 15 U.S.C. 78f(b)(5).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. The intra-day, closing, and settlement prices of the portfolio securities will also be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–21 and should be submitted on or before April 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–7894 Filed 4–2–12; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66670; File No. SR–NYSEArca–2012–09]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the PIMCO Global Advantage Inflation-Linked Bond Strategy Fund Under NYSE Arca Equities Rule 8.600

March 28, 2012.

I. Introduction

On January 27, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the PIMCO Global Advantage Inflation-Linked Bond Strategy Fund (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on February 16, 2012.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by PIMCO ETF Trust (''Trust''),[4] a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company. The investment manager of the Fund is Pacific Investment Management Company LLC (''PIMCO'' or ''Adviser''). State Street Bank & Trust Co. is the custodian and transfer agent for the Fund, and PIMCO Investments LLC is the distributor for the Fund. The Exchange states that the Adviser is affiliated with a broker-dealer and, as such, represents that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio.[5]

PIMCO Global Advantage Inflation-Linked Bond Strategy Fund

The Fund seeks total return which exceeds that of its benchmark indexes, consistent with prudent investment management. The Fund's primary benchmark index is the Barclays Capital Universal Government Inflation-Linked Bond Index. The Fund's secondary benchmark index is the PIMCO Global Advantage Inflation-Linked Bond Index. The Fund seeks to achieve its investment objective by investing under normal circumstances [6] at least 80% of its assets in a portfolio of inflation-linked bonds that is economically tied to at least three developed and/or emerging market countries (one of which may be the United States). The Fund's holdings may include bonds issued by issuers in both developed and/or emerging market countries, and the Fund is expected to hold bonds of issuers that are economically tied [7] to many of the countries represented in the Fund's primary benchmark index.[8] Assets not invested in inflation-linked bonds may be invested in other types of Fixed Income Instruments.[9]

Inflation-linked bonds are government-issued fixed income securities that are structured to provide protection against inflation. The value of the bond's principal or the interest income paid on the bond is adjusted to track changes in an official inflation measure. The effective duration of the Fund's portfolio normally varies within two years (plus or minus) of the effective duration of the PIMCO Global Advantage Inflation-Linked Bond Index which, as of September 30, 2011, as converted, was 4.53 years.

The Fund will invest under normal circumstances at least 80% of its assets in inflation-linked bonds issued by U.S. or foreign governments (or any political subdivision, agency, authority or instrumentality of such government).[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66381 (February 10, 2012), 77 FR 9281 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On February 14, 2011, the Trust filed with the Commission Post-Effective Amendment No. 25 under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and Amendment No. 27 under the 1940 Act to the Trust's registration statement on Form N–1A relating to the Fund. On October 28, 2011, the Trust filed with the Commission Post-Effective Amendment No. 43 under the Securities Act and Amendment No. 45 under the 1940 Act to the Trust's registration statement on Form N–1A relating to the Fund (File Nos. 333–155395 and 811–22250) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571) (''Exemptive Order'').

[5] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[6] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[7] PIMCO generally considers an instrument to be economically tied to a non-U.S. country if the issuer is a foreign government (or any political subdivision, agency, authority or instrumentality of such government), or if the issuer is organized under the laws of a non-U.S. country. In the case of certain money market instruments, such instruments will be considered economically tied to a non-U.S. country if either the issuer or the guarantor of such money market instrument is organized under the laws of a non-U.S. country.

[8] Each country's approximate weighting within the global inflation-linked bond market, as reflected by the approximate weighting of the Barclays Capital Universal Government Inflation-Linked Bond Index (the Fund's primary benchmark), as of January 31, 2011, is as follows: U.S. 32%, U.K. 19%, France 11%, Brazil 10%, Italy 7%, Canada 2%, Germany 3%, Japan 3%, Mexico 2%, Sweden 2%, Turkey 2%, Argentina 1%, Australia 1%, Greece 1%, South Africa 1%, Chile <1%, Poland <1%, Colombia <1%, and South Korea <1%. Each country's approximate value of outstanding inflation-linked bonds also as of January 31, 2011, is as follows (in $ billions): U.S. $642.7, U.K. $392.2, France $222.0, Brazil $209.6, Italy $143.2, Canada $49.9, Germany $60.9, Japan $57.0, Mexico $45.7, Sweden $39.1, Turkey $45.9, Argentina $20.0, Australia $17.7, Greece $11.8, South Africa $26.4, Chile $8.2, Poland $5.5, Colombia $2.7, and South Korea $3.4.

[9] The term ''Fixed Income Instruments'' includes: securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (''U.S. Government Securities''); corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper; mortgage-backed and other asset-backed securities; inflation-indexed bonds issued both by governments and corporations; structured notes, including hybrid or ''indexed'' securities and event-linked bonds; bank capital and trust preferred securities; loan participations and assignments; delayed funding loans and revolving credit facilities; bank certificates of deposit, fixed time deposits and bankers' acceptances; repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments; debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises; obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and obligations of international agencies or supranational entities. Securities issued by U.S. Government agencies or government-sponsored enterprises may not be guaranteed by the U.S. Treasury.

[10] The value of inflation-linked bonds is expected to change in response to changes in real interest rates. Real interest rates are tied to the relationship between nominal interest rates and the rate of inflation. If nominal interest rates increase at a faster rate than inflation, real interest rates may rise,

Continued

The secondary benchmark includes a liquidity screen to remove inflation-linked bonds issued by governments of countries with cumulative inflation-linked bond issuances below $7 billion local currency equivalent, in addition to liquidity screens at the issue level. The Exchange represents that the global inflation-linked bond market exceeded $2.25 trillion as of December 31, 2011.[11]

The Fund primarily will invest in debt securities rated Baa or higher by Moody's Investors Service, Inc., or equivalently rated by Standard & Poor's Ratings Services or Fitch, Inc., or, if unrated, determined by PIMCO to be of comparable quality.[12] The Fund may obtain foreign currency exposure (from non-U.S. dollar denominated debt securities or currencies) without limitation. The Fund may purchase and sell debt securities on a when-issued, delayed delivery or forward commitment basis. The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls). The Fund may invest, without limitation, in debt securities and instruments of foreign government issuers, including debt securities and instruments economically tied to emerging market countries.

Other Portfolio Holdings

If PIMCO believes that economic or market conditions are unfavorable to investors, PIMCO may temporarily invest up to 100% of the Fund's assets in certain defensive strategies, including holding a substantial portion of the Fund's assets in cash, cash equivalents, or other highly rated short-term securities, including securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, and affiliated money market and/or short-term bond funds.

The Fund may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and rules thereunder, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange traded funds. In addition, the Fund may enter into foreign currency transactions (such as currency forwards).[13]

The Fund may hold in the aggregate up to 15% of its net assets in: (1) Illiquid securities, which include delayed funding loans, revolving credit facilities, fixed- and floating-rate loans, and loan participations and assignments, and (2) Rule 144A securities. Certain illiquid securities may require pricing at fair value as determined in good faith under the supervision of the Fund's Board of Trustees. The term ''illiquid securities'' for this purpose means securities that cannot be disposed of within seven days in the ordinary course of business at approximately the amount at which the Fund has valued the securities.

With respect to its equity securities investments, the Fund will invest only in U.S. registered equity securities and non-U.S.-registered equity securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.

Investment Limitations

The Fund is subject to the following investment limitations:

The Fund may not concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise permitted by regulatory authority having jurisdiction from time to time.[14]

The Fund will be non-diversified, which means that it may invest its assets in a smaller number of issuers than a diversified fund.[15]

The Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple of the Fund's primary broad-based securities benchmark index (as defined in the Registration Statement, *i.e.,* the Barclays Capital Universal Government Inflation-Linked Bond Index).

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[16] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Additional information regarding the Trust, Fund, Shares, Fund's investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[17]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is

leading to a decrease in value of inflation-linked bonds.

[11] The value of the global inflation-linked bond market is calculated based on the total outstanding value of issues included in the Barclays Capital Universal Government Inflation-Linked Bond Index that are not expiring in less than one year.

[12] The Adviser represents that, in selecting securities for the Fund, PIMCO will develop an outlook for interest rates, currency exchange rates and the economy, analyze credit and call risks, and use other security selection techniques. The proportion of the Fund's assets committed to investment in securities with particular characteristics (such as quality, sector, interest rate or maturity) will vary based on PIMCO's outlook for the U.S. economy and the economies of other countries in the world, the financial markets, and other factors. Sophisticated proprietary software will assist in evaluating sectors, pricing and rating specific securities. Once investment opportunities are identified, PIMCO will shift assets among sectors and securities depending upon changes in relative valuations and credit spreads in a manner consistent with the Fund's objective and strategies. To the extent the Fund invests in unrated securities that PIMCO determines to be of comparable quality to rated securities that the Fund may purchase, the Fund's ability to achieve its objective may depend more heavily on PIMCO's creditworthiness analysis than if the Fund invested exclusively in rated securities.

[13] The Fund may engage in these transactions primarily to: (1) Protect against uncertainty in the level of future foreign exchange rates in the purchase and sale of securities; or (2) lower currency deviations relative to the Fund's benchmark indexes.

[14] The Fund's policy with respect to the concentration of investments in a particular industry is disclosed in the Trust's Registration Statement.

[15] The minimum number of inflation-linked bonds and other Fixed Income Instruments and issuers in which the Fund may invest at any one time depends in part upon the number of securities or issuers comprising the Fund's benchmark indexes. In seeking to achieve its investment objective, the Fund's portfolio will consist of at least twenty-five (25) inflation-linked bonds and other Fixed Income Instruments on any given day, but the Fund may regularly invest in fifty (50) or more inflation-linked bonds and other Fixed Income Instruments at a time in seeking to achieve its investment objective. The Fund's portfolio will hold issues of at least 13 non-affiliated issuers.

[16] 17 CFR 240.10A–3.

[17] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

consistent with the requirements of Section 6 of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[20] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[22] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[23] The NAV of the Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange (''NYSE''), ordinarily 4 p.m. Eastern Time on each business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, price information for the debt securities held by the Fund will be available through major market data vendors. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[24] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[25] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[26] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with a broker-dealer, and the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[27]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with

[18] 15 U.S.C. 78f.

[19] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[22] According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

[23] On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[24] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[25] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[26] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[27] *See supra* note 5. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[28] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will invest only in U.S.-registered equity securities and non-U.S.-registered equity securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange; the Fund's investments will be consistent with its investment objective and will not be used to enhance leverage; and consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.

(7) The Fund may hold in the aggregate up to 15% of its net assets in: (a) Illiquid securities, which include delayed funding loans, revolving credit facilities, fixed- and floating-rate loans, and loan participations and assignments; and (b) Rule 144A securities.

(8) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[29] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NYSEArca–2012–09) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–7913 Filed 4–2–12; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 240.10A–3.

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66668; File No. SR–Phlx–2012–35]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Equity Options Fees and Singly Listed Option Fee

March 28, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that, on March 16, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend: (i) Section II[3] of the Fee Schedule entitled ''Equity Options Fees'' to assess Professionals an Options Surcharge in certain Multiply Listed Options; (ii) amend Section III[4] of the Fee Schedule entitled ''Singly Listed Options'' to specify certain options that would be subject to the fees in this section; and (iii) amend the title of the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section II of the Fee Schedule to assess Professionals an Options Surcharge for transactions in RUT,[5] MNX,[6] NDX[7] and BKX.[8] The Exchange believes that these surcharges will assist the Exchange in remaining competitive in these options. The Exchange also proposes to amend Section III of the Fee Schedule to specify that the following options: PHLX Semiconductor Sector℠ (SOX℠), PHLX Housing Sector™ (HGX℠) and PHLX Oil Service Sector℠ (OSX℠) are subject to the Singly Listed Options Transaction Charge even though these options will no longer be Singly Listed. These above-referenced options are proprietary indexes. These options will be listed on the NASDAQ Options Market LLC (''NOM'') commencing on April 2, 2012. The Exchange seeks to continue to recoup fees associated with maintaining these proprietary indexes. The Exchange is also proposing to amend the title of the Fee Schedule to more specifically describe the document.

Section II Amendments

The Exchange currently assesses an Options Surcharge for transactions in RUT, MNX and NDX of $.15 per

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Section II of the Fee Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

[4] Section III of the Fee Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are not listed on another exchange.

[5] RUT represents the options on the Russell 2000® Index (the ''Full Value Russell Index'' or ''RUT'').

[6] MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX (''MNX'').

[7] NDX represents options on the Nasdaq 100 Index1 traded under the symbol NDX (''NDX'').

[8] BKX represents the KBW Bank Index.

contract for Market Makers,[9] Broker-Dealers and Firms.[10] The Exchange also currently assesses an Options Surcharge for transactions in BKX of $.10 per contract for Market Makers, Broker-Dealers and Firms.[11] The Exchange is proposing to assess Professionals an Options Surcharge for transactions in RUT, MNX and NDX of $.15 per contract and an Options Surcharge for transactions in BKX of $.10 per contract. Customers will continue not to be assessed an Options Surcharge in RUT, MNX, NDX and BKX.

Section III Amendments

Currently, SOX, HGX and OSX are Singly Listed Options subject to the following fees in Section III of the Fee Schedule:

	Customer	Professional	Market maker	Firm	Broker-dealer
Options Transaction Charge	$0.35	$0.45	$0.35	$0.45	$0.45

On April 2, 2012, NOM will list SOX, HGX and OSX and therefore these options will become Multiply Listed. The Exchange proposes to continue to assess SOX, HGX and OSX the Singly Listed Options Transaction Charges in Section III by specifying that these index options will be subject to Section III fees, even though they will no longer be Singly Listed. The Exchange also proposes to indicate in Section II of the Fee Schedule that SOX, HGX and OSX would be subject to the fees in Section III.

Other Amendments

The Exchange is also proposing to amend the title of the ''Fee Schedule'' to ''Pricing Schedule'' to more specifically describe this document.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange's proposal to assess Professionals a $.15 per contract Options Surcharge for transactions in RUT, MNX and NDX and a $.10 per contract Options Surcharge for transactions in BKX is reasonable because Professionals would be assessed a fee that is less favorable than a Customer but equivalent to all other market participants because it has been established that Professionals have access to more information than a Customer. It can be argued that Professionals have the same technological and informational advantages as broker-dealers trading for their own account. The Exchange believes that Professionals, who are considered sophisticated algorithmic traders, utilize the advantaged Customer pricing they receive to effectively compete with Market Makers and Broker-Dealers[14] without the obligations of either. Also, the Exchange believes that unlike Customers, Professionals are able to shoulder the burden of fees as effectively as other market participants.

The Exchange's proposal to assess Professionals a $.15 per contract Options Surcharge for transactions in RUT, MNX and NDX and a $.10 per contract Options Surcharge for transactions in BKX is equitable and not unfairly discriminatory because all market participants, except for Customers, would be uniformly assessed the Options Surcharge fees for RUT, MNX, NDX and BKX, respectively. A lower Customer fee benefits all market participants by incentivizing market participants to transact a greater number of Customer orders, which results in increased liquidity. Additionally, today Professionals are assessed a higher fee as compared to Customers in both Penny Pilot Options[15] and non-Penny Pilot Options.[16]

The Exchange's proposal to continue to assess SOX, HGX and OSX the fees in Section III for Singly Listed Options is reasonable because the Exchange is seeking to continue to recoup the operation and development costs associated with these proprietary indexes.[17]

The Exchange believes that its proposal to continue to assess SOX, HGX and OSX the fees in Section III for Singly Listed Options is equitable and not unfairly discriminatory because all market participants would be assessed the Singly Listed Options Transaction Charges for transacting options on these indexes instead of the Options Transaction Charges in Section II.[18] Specifically, all market participants would be assessed the higher fees in Section III, as compared to the fees in Section II, with the exception of a Broker-Dealer electronically transacting options on these indexes.[19] The Exchange has previously stated that it

[9] The term ''Market Maker'' is utilized herein to describe fees and rebates applicable to Specialists, Registered Options Traders, Streaming Quote Traders and Remote Streaming Quote Traders.

[10] Currently, Professionals are not assessed an Options Surcharge for transactions in RUT, MNX or NDX.

[11] Currently, Professionals are not assessed an Options Surcharge for transactions in BKX.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] Broker-dealers pay registration and membership fees in self-regulatory organizations (''SRO'') and incur costs to comply and assure that their associated persons comply with the Act and SRO rules.

[15] The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through June 30, 2012. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR–Phlx–2009–94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR–Phlx–2010–12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR–Phlx–2010–65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010) (SR–Phlx–2010–103) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 63395 (November 30, 2010), 75 FR 76062 (December 7, 2010) (SR–Phlx–2010–167) (notice of filing and immediate effectiveness extending the Penny Pilot); and 65976 (December 15, 2011), 76 FR 79247 (December 21, 2011) (SR–Phlx–2011–172) (notice of filing and immediate effectiveness extending the Penny Pilot). *See also* Exchange Rule 1034.

[16] Customers are not assessed an Options Transaction Charge for either Penny Pilot Options or non-Penny Pilot Options while Professionals are assessed $.20 per contract for both Penny and non-Penny Pilot Options.

[17] The Exchange continues to incur costs for maintaining these proprietary indexes including marketing expenses.

[18] The Options Transaction Charges for non-Penny Multiply Listed Options are as follows: Customers pays $.00 per contract, a Professional pays $.20 per contract, a Market maker pays $.23 per contract for electronic transactions and $.25 per contract for non-electronic transactions, a Broker-Dealer pays $.50 per contract for electronic transactions and $.25 per contract for non-electronic transactions and a Firm pays $.40 per contract for electronic transactions and $.25 per contract for non-electronic transactions. See Section II of the Fee Schedule.

[19] The Broker-Dealer non-Penny options transaction charge for a Multiply Listed Option is $.50 per contract as compared to the Broker-Dealer fee of $0.45 per contract for Singly Listed Options.

incurs higher costs for Singly Listed Options as compared to Multiply Listed Options.[20] The Chicago Board Options Exchange, Incorporated (''CBOE'') noted in a comment letter dated June 21, 2010 that CBOE relies upon fees to, among other things, generate returns on its investments for its own popular proprietary products (such as The CBOE Volatility Index® (''VIX®'') Options).[21] In addition, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory because the fees are consistent with price differentiation that exists today at all option exchanges. For example, CBOE assesses different rates for certain proprietary indexes as compared to other index products transacted at CBOE. VIX options and The S&P 500® Index options (''SPX℠'') are assessed different fees than other indexes.[22]

The Exchange believes that its proposal to rename the ''Fee Schedule'' as the ''Pricing Schedule'' is reasonable, equitable and not unfairly discriminatory because the Exchange believes that the changing the title to ''Pricing Schedule'' more specifically describes the fees, rebates and other charges reflected in the document termed ''Fee Schedule.''

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[23] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–35 and should be submitted on or before April 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–7914 Filed 4–2–12; 8:45 am]

BILLING CODE 8011–01–P

[20] *See* Securities Exchange Release Act No. 64096 (March 18, 2011), 76 FR 16646 (March 24, 2011) (SR–Phlx–2011–34).

[21] *See* CBOE's Comment Letter dated June 21, 2010 to the Proposed Amendments to Rule 610 of Regulation NMS, File No. S7–09–10. CBOE further noted that options exchanges expend considerable resources on research and development related to new product offerings and options exchanges incur large licensing costs for many products.

[22] *See* CBOE's Fees Schedule.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13052 and #13053]

Illinois Disaster #IL–00035

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of ILLINOIS dated 03/22/2012.

Incident: Severe Storms and Tornadoes.

Incident Period: 02/29/2012 through 03/02/2012.

Effective Date: 03/22/2012.

Physical Loan Application Deadline Date: 05/21/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/24/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Saline.

Contiguous Counties

Illinois: Franklin, Gallatin, Hamilton, Hardin, Johnson, Pope, White, Williamson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere.	3.750
Homeowners without Credit Available Elsewhere.	1.875
Businesses with Credit Available Elsewhere.	6.000
Businesses without Credit Available Elsewhere.	4.000
Non-Profit Organizations with Credit Available Elsewhere.	3.125
Non-Profit Organizations without Credit Available Elsewhere.	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere.	4.000
Non-Profit Organizations without Credit Available Elsewhere.	3.000

The number assigned to this disaster for physical damage is 13052C and for economic injury is 130530.

The State which received an EIDL Declaration # is Illinois.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 22, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–7940 Filed 4–2–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Pilot Schools

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information on FAA Form 8420–8, Application for Pilot School Certificates, is required from applicants who wish to be issued pilot school certificates and associated ratings.

DATES: Written comments should be submitted by June 4, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0009.

Title: Pilot Schools.

Form Numbers: FAA form 8420–8.

Type of Review: Renewal of a current information collection.

Background: The information on FAA Form 8420–8, Application for Pilot School Certificates, is required from applicants who wish to be issued pilot school certificates and associated ratings. Pilot schools train private, commercial, flight instructor, and airline transport pilots, along with training for associated ratings in various types of aircraft. The form is also necessary to assure continuing compliance with Part 141, renewal of certificates every 24 months, and for any amendments to pilot school certificates, FAA approval of pilot school certificate amendments enables schools to provide new training courses not previously approved.

Respondents: Approximately 546 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 27 hours.

Estimated Total Annual Burden: 29,770 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Dated: Issued in Washington, DC, on March 27, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–7937 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Specific Release Form

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information garnered from a signed Specific Release form is used by FAA Special Agents to obtain information related to a specific investigation. That information is then provided to the FAA decision making authority to make FAA employment and/or pilot certification/revocation determinations.

DATES: Written comments should be submitted by June 4, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0740.

Title: Specific Release Form.

Form Numbers: FAA Form 1600–81.

Type of Review: Renewal of a current information collection.

Background: Investigations are conducted under authority derived from Title 49, United States Code (U.S.C.), Sections 106, 40113, 40114, 46101, and 46104, the Aviation Drug Trafficking Control Act of 1984, the Anti-Drug Abuse Act of 1986, and the FAA Drug Enforcement Assistance Act of 1988, which is part of Public Law 100–690, also known as the Anti-Drug Abuse Act of 1988. The public respondents Pilots, or FAA job applicants from whom additional information is needed to complete a thorough investigation. The information garnered from a signed Specific Release form is used by FAA Special Agents to obtain information related to a specific investigation. That

information is then provided to the FAA decision making authority to make FAA employment and/or pilot certification/revocation determinations.

Respondents: Approximately 270 subjects of investigation.

Frequency: Information is collected as needed.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 23 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on March 27, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–7934 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement on the Durham-Orange Light Rail (LRT) Project, Durham and Orange Counties, NC

AGENCY: Federal Transit Administration (FTA), United States Department of Transportation (USDOT).

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Research Triangle Regional Public Transportation Authority, dba ''Triangle Transit,'' intend to prepare an Environmental Impact Statement (EIS) to study a proposed premium transit service corridor in Durham and Orange Counties, North Carolina. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA: 42 U.S.C. 4321 *et seq.*) of 1969 and the regulations implementing NEPA set forth in 40 CFR Parts 1500–1508 and 23 CFR Part 771, as well as provisions set forth in the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The purpose of this Notice is to: (1) Advise the public that FTA is serving as the lead Federal agency; (2) provide information on the proposed project, purpose and need for the project, and alternatives to be considered; and (3) invite public and agency participation in the EIS process.

DATES: *Comment Due Date:* Written or electronic comments on the scope of the EIS, including the purpose and need for transportation action in the corridor, and alternatives and impacts to be considered should be sent to the project team (see **ADDRESSES** below) by Monday, June 18, 2012.

Scoping Meetings Dates: Scoping meetings will be held during the week of April 30, 2012 at the following times and locations. The scoping meeting locations are accessible by transit and to persons with disabilities. Confirmed times and locations will also be published in local notices and on the project Web site.

Elected Officials and Partners Meeting: Tuesday, April 24, 2012; 10 a.m.–12 p.m. noon; Extraordinary Ventures Center, 200 S. Elliott Rd., Chapel Hill, NC 27514.

Agency Meeting: Thursday, May 3, 2012; 1 p.m. to 3 p.m.; Durham Armory, 212 Foster St., Durham, NC 27701.

Public Scoping Meetings: Wednesday May 2, 2012; 4 p.m.–7 p.m.; Extraordinary Ventures Center, 200 S. Elliott Rd., Chapel Hill, NC 27514. Thursday, May 3, 2012; 4 p.m.–7 p.m.; Durham Armory, 212 Foster St., Durham, NC 27701.

ADDRESSES: *Written comments* on the scope of alternatives and impacts to be studied should be sent to the project team via one of the following methods: Mail to Durham-Orange LRT Project, P.O. Box 580, Morrisville, North Carolina 27560; fax to Durham-Orange LRT Project at 919.461.1415; or email to *info@ourtransitfuture.com*. Comments may also be offered at the public scoping meetings. The addresses for the public scoping meetings are included above. All meeting locations are accessible by transit and to persons with disabilities. The project team must be contacted by Wednesday, April 25, 2012 regarding special needs such as signing or translation service for languages other than Spanish. Spanish translation services will be provided at the public meetings. The times and locations for the public scoping meetings will also be provided through display advertisements in local newspapers; newsletters that will be mailed to persons on the project database that have expressed an interest in the project; email notifications; media releases that will be distributed to all print and electronic media serving the corridor; and posting of information on the project Web site.

The Scoping Information Booklet is available on the project Web site at *http://www.ourtransitfuture.org/index.php/projects/durham-orange/*. The booklet is also available in hardcopy form by contacting the project team as indicated below.

Additional scoping information or other project information may be requested by calling the project hotline at 1–800–816–7817, visiting the Web site at *http://www.ourtransitfuture.org/index.php/projects/durham-orange/,* or by mailing a request to Durham-Orange LRT Project, P.O. Box 580, Morrisville, North Carolina 27560.

FOR FURTHER INFORMATION CONTACT: Mr. Brian C. Smart, Environmental Protection Specialist, Federal Transit Administration, 230 Peachtree Street NW., Suite 800, Atlanta, GA 30303, telephone (404) 865–5607.

SUPPLEMENTARY INFORMATION:

I. Scoping

In accordance with Section 6002 of SAFETEA–LU, FTA and Triangle Transit invite comment on the scope of the EIS, specifically on the proposed project's purpose and need, the alternatives to be evaluated that may address the purpose and need, and the impacts of the alternatives considered. Specific suggestions related to additional alternatives are welcome and will be considered in the development of the scope of the EIS. Scoping comments may be made at the scoping meetings or in writing no later than Monday, June 18, 2012 (see **DATES** and **ADDRESSES** above).

Scoping materials will be available at the meeting or in advance of the meeting by contacting the project team as indicated above. If you wish to be placed on the mailing list to receive further information as the project continues, contact the project team (see **ADDRESSES** above).

The relationships between concurrent projects such as the NC 54/I–40 Corridor Study and other projects will be considered in the EIS.

Subsequent to the completion of the Scoping Summary document and prior to initiation of the DEIS, a concluding

stakeholders meeting will be held during which interested federal, state and local government agencies will collectively process all input and formally develop the final scope of the EIS.

II. Purpose and Need for the Proposed Project

The purpose of the proposed premium high-capacity transit investment in the Durham-Orange Corridor is to provide a transit solution that addresses the following mobility and development needs:

• *Need to enhance mobility:* The Durham-Orange Corridor is forecast to absorb a significant share of the region's population and employment growth, which will translate into increased travel demand. By 2035, the corridor is projected to add about 74,000 people and 81,000 jobs, which is expected to generate 255,000 additional daily trips, many of which will be made on local roadways. These trips will increase congestion during the highest AM and PM travel periods. Alternatives to the auto are needed to address the limited capacity of the roadway system to accommodate increased travel demand.

• *Need to expand transit options between Durham and Chapel Hill:* Most bus service in the Durham-Orange Corridor is concentrated in downtown Durham and downtown Chapel Hill. Transit connecting these urban centers and serving the residential areas and retail developments between them is limited to two Triangle Transit routes and the Duke University Robertson Scholars Express Bus. Currently, these buses operate in mixed traffic along increasingly congested roadways, have limited capacity, and are not competitive with the auto for most trips. Furthermore, the Study Area does not currently offer the type of high quality premium transit service that is an attractive alternative to driving, particularly under congested conditions.

• *Need to serve population with high propensity for transit use:* University students and employees, as well as transit-dependent populations, are a significant percentage of the population in the Durham-Orange Corridor. Expanding transit services and increasing access to each of the university campuses and medical centers, which offer pedestrian-friendly environments, limited parking, and free transit passes, will support increased mobility options for university students, employees and other patrons. Also, expanding reliable mobility options for lower income populations and transit users who may not be able to drive will enhance economic opportunities through improved access to major jobs centers along the corridor. Providing a transit option that supports the mobility of these groups satisfies an important need.

• *Need to foster compact development:* Local governments recognize the need to limit sprawl and manage growth within the Study Area. Durham City/County, Chapel Hill, and Orange County have developed plans and implementation strategies that call for more compact, walkable, higher density, mixed-use development within the corridor. However, the existing transit infrastructure throughout the corridor is not fully supportive of these land use plans and implementation strategies and cannot facilitate long-term economic development. A proposed fixed guideway transit investment can channel future growth, provide a superior transit option appropriate for high density development, and help local communities realize their future goals and objectives.

III. Study Area Description

Located in both Durham and Orange counties, the Durham-Orange Corridor Study Area extends approximately 17 miles, beginning in southwest Chapel Hill and encompassing the UNC campus, downtown Chapel Hill, suburban areas along NC 54, US 15–501, NC 147 (Durham Freeway), I–40, Duke University, and downtown and east Durham.

IV. Alternatives Analysis and Results

The Durham-Orange County Corridor Alternatives Analysis (AA) Report (available at *http://www.ourtransitfuture.org/index.php/projects/durham-orange/d-o-maps-reports#aa*) responds to Federal regulations for transit projects seeking New Starts funding (Title 49 United States Code [U.S.C.] 5309.) The Durham-Orange County Corridor AA considered a Transportation Systems Management (TSM) Alternative, Bus Rapid Transit (BRT) alternatives, and a light rail alternative. The BRT and light rail routes included alignments on new location and within the right-of-way of existing roads, with a variety of station locations. All of the alternatives that were evaluated would run from the terminus at the UNC Hospitals eastwards to Fordham Boulevard, east along NC 54, north parallel to I–40 and then within the US 15–501corridor to Erwin Road. The corridor follows Erwin Road past Duke University and Medical Center and turns east parallel to NC 147 through downtown Durham and terminates at Alston Avenue in east Durham. These alternatives were evaluated based upon their ability to meet the project's purpose and need statement (stated above), and considering factors such as ridership and transportation operations, land use, expansion potential, economic development potential, public and agency support, environmental impacts, technical and financial feasibility and cost. Triangle Transit conducted the AA in coordination with the jurisdictions and agencies with interests in the corridor, including Durham and Orange counties, the Town of Chapel Hill, City of Durham, Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO), and the North Carolina Department of Transportation.

The AA concluded by identifying the most promising alternatives for further analysis. It identified LRT as the only mode that most fully satisfies the Purpose and Need for premium transit service in the Durham-Orange Corridor related to enhancing mobility, expanding transit options between Durham and Chapel Hill, serving populations with high propensity for transit use, and fostering compact development and economic growth. While an exclusive-running BRT Alternative has the potential to meet the project's purpose and need and is competitive in meeting most project goals, it does not perform as well as LRT in relation to supporting local and regional economic development, planned growth management initiatives, travel time savings, and cost effectiveness of expanding ridership capacity. Local and regional stakeholders place a high level of importance on economic development potential and focusing growth within the proposed transit corridor through transit-oriented development. The LRT Alternative has a high-level of demonstrated public support and a proven record of producing local and regional economic development benefits by enhancing and focusing growth within LRT corridors. On February 8, 2012, the DCHC MPO Transportation Advisory Committee (TAC) (MPO's policy board) unanimously adopted the LRT Alternative as the preliminary locally preferred alternative (LPA). The Alternatives Analysis findings are available on the project Web site at *http://www.ourtransitfuture.org/index.php/projects/durham-orange*.

IV. Potential EIS Alternatives

The results of the AA have led FTA and Triangle Transit to consider for inclusion in the EIS the following range of alternatives, on which FTA and Triangle Transit request public and

agency comments. The EIS will evaluate the following alternatives between the University of North Carolina (UNC) Hospitals and east Durham: A No-Build alternative; a Transportation System Management (TSM) alternative consisting of an enhanced bus network that provides a level of transit service and capacity roughly equivalent to that of a fixed-guideway transit service; and a Light Rail Transit (LRT) alternative consisting of a new fixed-guideway rail alignment and support facilities. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state, and local agencies, and through public and agency meetings. The FTA and Triangle Transit invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated and identifying any significant social, economic, and/or environmental issues related to the alternatives.

1. No-Build

The No-Build alternative includes all highway and transit facilities identified in the fiscally constrained joint Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (MPO)—Capital Area MPO 2035 Long-Range Transportation Plan (LRTP), with the exception of the comprehensive system-wide rail transit network, part of which is the subject of this EIS. The No-Build alternative is used as a starting point to provide a comparison of all Build alternatives in terms of costs, benefits, and impacts.

2. Transportation System Management

The TSM alternative is required for inclusion in the EIS by the FTA when federal funds are sought for capital improvements. The primary purpose of the TSM alternative is to develop an enhanced and robust bus network in the Durham-Orange Corridor that provides a level of transit service and capacity roughly equivalent to that of a fixed-guideway improvement. The intention is to compare the efficiency and cost-effectiveness of a significant bus network in the corridor with fixed-guideway improvements to determine the impact on transit ridership, travel time, and other measures. The backbone of the TSM alternative would be a new bus route operating between UNC Hospitals and east Durham, covering a distance of approximately 19 miles from Chapel Hill to Durham. Buses would operate at 10-minute headways in the peak periods and 20-minute headways in the off-peak periods. Travel time between the UNC Hospitals in Chapel Hill and Alston Avenue in east Durham is estimated to be 57 minutes. The high-frequency bus route would closely follow that of the LRT alternative, as described below.

3. Light Rail Transit

The LRT alternative would operate light rail transit vehicles between UNC Hospitals and east Durham, covering a distance of approximately 17.1 miles. The LRT would operate at 10-minute frequencies during peak hours and 20-minute frequencies during off-peak hours. LRT travel time is estimated to be 35 minutes between the UNC Hospitals Station in Chapel Hill and the Alston Avenue Station in east Durham. The alignment would be double-tracked throughout, with one track for each direction of travel. The alignment would primarily run at-grade in a dedicated right-of-way parallel to existing roadways, with elevated sections throughout to mitigate potential traffic impacts and/or impacts to environmental resources.

V. Probable Effects

The EIS evaluation will analyze the social, economic, and environmental impacts of the alternatives. Major issues to be evaluated include air quality, noise and vibration, aesthetics, community cohesion impacts, potential natural resource impacts, and possible disruption of neighborhoods, businesses and commercial activities. The impact areas and level of detail addressed in the EIS will be consistent with the requirements of SAFETEA–LU Section 6002 and the FTA/Federal Highway Administration environmental regulation (Environmental Impact and Related Procedures, 23 CFR Part 771 and 40 CFR Parts 1500–1508) and other environmental and related regulations. Among other factors, the EIS will evaluate the following:

- Transportation service including future corridor capacity.
- Transit ridership and costs.
- Traffic movements and changes, and associated impacts to local facilities.
- Community impacts such as land use, displacements, noise and vibration, neighborhood compatibility and aesthetics.
- Resource impacts including impacts to historic and archeological resources, parklands, cultural resource impacts, environmental justice, and natural resource impacts including air quality, wetlands, water quality, wildlife, and vegetation.

The proposed impact assessment and evaluation will take into account both positive and negative impacts, direct and indirect impacts, short-term (during the construction period) and long-term impacts, and site-specific as well as corridor-wide and cumulative impacts. Mitigation measures will be considered for any significant environmental impacts identified. Other potential impacts may be added as a result of scoping and agency coordination efforts.

VI. FTA Procedures

The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500 to 1508) and FHWA environmental impact regulations (49 CFR Part 622, 23 CFR Part 771, and 23 CFR Part 774) and Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) of 2005. This EIS will also comply with requirements of Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR Part 800), Section 4(f) of the U.S. Department of Transportation Act of 1966 (23 CFR 771.135), the 1990 Clean Air Act Amendments, Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations), Executive Order 11990 (Protection of Wetlands), the regulation implementing Section 7 of the Endangered Species Act (50 CFR Part 402), and other applicable federal laws, rules, and regulations. This EIS will also satisfy local and state environmental review requirements.

Regulations implementing NEPA, as well as provisions of SAFETEA–LU, call for enhanced agency and public involvement in the EIS process. An invitation to all Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project will be extended. In the event that an agency or tribe is not invited and would like to participate, please contact Brian Smart at the contact information listed above. The public coordination and outreach efforts will include public meetings, open houses, a project Web site, stakeholder advisory and work groups, and public hearings.

The project sponsor may identify a locally preferred alternative in the DEIS when made available for public and agency comments. Public hearings on the DEIS will be held. On the basis of the DEIS and the public and agency comments received, the Project Sponsor will identify the locally preferred alternative in the FEIS. The FEIS will serve as the basis for federal and state environmental findings and

determinations needed to conclude the environmental review process.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 27, 2012.

Yvette G. Taylor,

Regional Administrator.

[FR Doc. 2012–7897 Filed 4–2–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for the Georgia Multi-Modal Passenger Terminal

AGENCY: Federal Transit Administration (FTA), United States Department of Transportation (USDOT).

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: The FTA and the Georgia Department of Transportation (GDOT) intend to prepare an Environmental Impact Statement (EIS) for a proposed transit terminal project in Atlanta, Fulton County, Georgia. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA: 42 U.S.C. 4321 *et seq.*) of 1969 and the regulations implementing NEPA set forth in 40 CFR Parts 1500–1508 and 23 CFR Part 771, as well as provision of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU).

The purpose of this Notice is to:

- Advise the public of FTA serving as the lead Federal agency;
- Provide information on the proposed project, purpose and need for the project, and alternatives to be considered; and
- Invite public and agency participation in the EIS process.

The EIS will examine alternatives to provide a facility to serve as a destination and transfer point for a variety of regional and local transportation services in Downtown Atlanta.

DATES: The date, time, and location for the public scoping meetings are as follows:

April 24, 2012

4 p.m. to 7 p.m.

Georgia Railroad Freight Depot, The Freight Room, 65 Martin Luther King Jr. Drive SE., Atlanta, GA 30303.

May 1, 2012

11 a.m. to 2 p.m.

Georgia State University Student Center, Court Salon, 44 Gilmer Street, Atlanta, GA 30302.

May 3, 2012

4 p.m. to 7 p.m.

Antioch Baptist Church North, 540 Cameron M. Alexander Blvd. NW., Atlanta, Georgia, 30318.

ADDRESSES: Written comments on the project should be sent to:

Jonathan Cox, Georgia Department of Transportation, One Georgia Center, 600 West Peachtree Street NW., Atlanta, Georgia 30308. *Telephone:* (404) 631–1197. *Email: jocox@dot.ga.gov.*

Brian Smart, Federal Transit Administration, 230 Peachtree Street NW., Suite 800, Atlanta, GA 30327. *Telephone:* 404–865–5607. *Email: brian.smart@dot.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 6002 of SAFETEA–LU, FTA and GDOT invite comment on the scope of the EIS, specifically on the project's purpose and need, the alternatives to be evaluated that may address the purpose and need, and the potential impacts of the alternatives considered.

1. Scoping

On April 24, 2012, May 1, 2012, and May 3, 2012, public scoping meetings will be held to solicit public comments on the scope of the EIS. Oral and written comments will be accepted from the public at the scoping meeting. If special services such as translation, including sign language, are needed, please contact Jonathan Cox at the number listed above.

A notice of the public scoping briefing will be published in local newspapers and on the project Web site (*www.georgiap3.com/mmpt*). The notice will also identify the closing date of the public comment period on the scope of the EIS.

2. Description of the Project Area

The historic hub of Atlanta's freight railroads lies just west of the Five Points intersection in Downtown Atlanta. While some lines remain active, others have been converted to passenger use by the Metropolitan Atlanta Regional Transportation Authority (MARTA) or are abandoned. Portions of Atlanta's massive rail yards were decked over for large-scale public and private developments, including CNN Center, the Georgia World Congress Center, Philips Arena, and the Georgia Dome.

In-between Five Points and the CNN Center, a portion of the former rail yards serve as parking or vacant land. The street grid crosses these parcels on viaduct such that the parking and vacant land is 20 feet or so below ground elevation. This area of parking and vacant land is commonly referred to as the ''Gulch.''

The EIS will focus on an area bounded by Centennial Olympic Park Drive to the west, Trinity Avenue to the south, Peachtree Street to the east, and Marietta Street to the north. Many blocks in this area are surface or structured parking or vacant buildings or lots. A few parcels contain office or commercial uses.

3. Purpose and Need

The Atlanta region lacks a transportation hub that provides a central facility and transfer point for its variety of existing and future inter-city, regional and local modal services. At the same time, the Gulch creates a large void in the downtown that physically and psychologically isolates surrounding destinations and districts from one another.

The purpose of the Georgia Multi-modal Passenger Terminal is to establish a multimodal hub to enhance regional mobility and connectivity among existing and proposed transit systems; to establish new connections between downtown neighborhoods; and to provide the opportunity to fill the Gulch, which will create an activity center and link existing and planned residential, employment and entertainment destinations in and near Downtown Atlanta.

The EIS will evaluate alternatives that address the following project goals:

(1) Provide a facility to serve as a destination and transfer point for a variety of regional and local transportation services;

(2) Improve passenger and freight connectivity in and within downtown Atlanta; and

(3) Attract new or renewed investment in a transit-centered environment.

4. Alternatives

FTA and GDOT will consider all reasonable alternatives to provide a multi-modal passenger terminal, and potentially related development that meet the purpose and need defined above. The alternatives considered will include at least a No Build Alternative

and one Build Alternative. The No Build Alternative consists of the transportation system expected to be in place in the project design year if the proposed project were not built. It includes all other projects currently in the Regional Transportation Plan and the Atlanta Regional Commission's Transportation Improvement Program (TIP) for the planning horizon. The Build alternatives will involve construction of a new multi-modal transit terminal and contributing features and amenities within the Gulch. Preliminary alternatives will be presented to the public during the scoping process for the EIS, and the public will have the opportunity to comment on the alternatives. The EIS will consider all reasonable alternatives that meet the project purpose and need and are considered prudent options by the project sponsors, agencies, and the public during the scoping process.

5. Probable Effects

The EIS will consider in detail the potential environmental effects of the alternatives under consideration based on the current scoping efforts. The Draft EIS (DEIS) and Final EIS (FEIS) will summarize the results of coordination with federal, state, and local agencies and the public at large; present the appropriate federal, state, and local regulations and policies; inventory and compile previous studies pertinent to the project; describe the methodology used to assess impacts; identify and describe the affected environment; analyze and document the construction-related (short-term) and operational (long-term) environmental consequences (direct, indirect, and cumulative) of the project alternatives; and identify opportunities and measures that mitigate any identified adverse impacts. The specific scope of analysis and study areas used to undertake the analysis in the EIS will be established during the public and agency scoping process.

6. FTA Procedures

The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500 to 1508) and FHWA environmental impact regulations (49 CFR part 622, 23 CFR Part 771, and 23 CFR part 774) and Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) of 2005. This EIS will also comply with requirements of Section 106 of the National Historic Preservation Act of 1966, as amended, Section 4(f) of the U.S. Department of Transportation Act of 1966, the 1990 Clean Air Act Amendments, Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations), Executive Order 11990 (Protection of Wetlands), and other applicable federal laws, rules, and regulations. This EIS will also satisfy environmental review requirements of the Georgia Environmental Policy Act (GEPA).

Regulations implementing NEPA, as well as provisions of SAFETEA–LU, call for enhanced agency and public involvement in the EIS process. An invitation to all Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project will be extended. In the event that an agency or tribe is not invited and would like to participate, please contact Jonathan Cox at the contact information listed above. A Coordination Plan and Public Involvement Plan have been developed summarizing how the public and agencies will be engaged in the process. The plans will be posted to the project Web site (*www.dot.ga.gov/MMPT*). The public coordination and outreach efforts will include public meetings, open houses, a project Web site, stakeholder advisory and work groups, and public hearings.

The project sponsor may identify a locally preferred alternative in the DEIS when made available for public and agency comments. Public hearings on the DEIS will be held in Fulton County. On the basis of the DEIS and the public and agency comments received, the Project Sponsor will identify the locally preferred alternative in the FEIS. The FEIS will serve as the basis for federal and state environmental findings and determinations needed to conclude the environmental review process.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 27, 2012.

Yvette G. Taylor,

Regional Administrator.

[FR Doc. 2012–7892 Filed 4–2–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012 0034]

Inventory of U.S.-Flag Launch Barges

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Inventory of U.S.-Flag Launch Barges.

SUMMARY: The Maritime Administration is updating its inventory of U.S.-flag launch barges. Additions, changes and comments to the list are requested. Launch barge information may be found at *http://www.marad.dot.gov/ships_shipping_landing_page/domestic_shipping/launch_barge_program/Launch_Barge_Program.htm*.

DATES: Any comments on this inventory should be submitted in writing to the contact person by May 3, 2012.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, Office of Cargo Preference and Domestic Trade, Maritime Administration, MAR–730, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone 202–366–5979; email: *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to 46 CFR part 389 (Docket No. MARAD–2008–0045) Determination of Availability of Coastwise-Qualified Vessels for the Transportation of Platform Jackets, the Final Rule requires that the Maritime Administration publish a notice in the **Federal Register** requesting that owners or operators (or potential owners or operators) of coastwise qualified launch barges notify us of:

(1) Their interest in participating in the transportation and, if needed, the launching or installation of offshore platform jackets; (2) the contact information for their company; and, (3) the specifications of any currently owned or operated coastwise qualified launch barges or plans to construct same. In addition, we are also seeking information on non-coastwise qualified (U.S.-flag) launch barges as well.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.
Dated: March 26, 2012.
Julie P. Agarwal,
Secretary, Maritime Administration.

Dated: March 26, 2012.
Julie P. Agarwal,
Secretary, Maritime Administration.

REPORTED U.S.-FLAG LAUNCH BARGES—JUNE 2011

Vessel name	Owner	Built	Length (ft.)	Beam (ft.)	DWT (L.T.)	Approx launch capacity (L.T.)	Coastwise qualified
455 4	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 5	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 6	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 7	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 8	Crowley Marine Services	2010	400	105	19,226	18,766	X
455 9	Crowley Marine Services	2010	400	105	19,226	18,766	X
Barge 400L	Crowley Marine Services	1997	400	100	19,646	19,146	X
Barge 410	Crowley Marine Services	1974	400	99.5	12,035	11,535	X
Barge 455–3	Crowley Marine Services	2008	400	105	19,226	18,766	X
Barge 500–1	Crowley Marine Services	1982	400	105	16,397	15,897	X
Julie B	Crowley Marine Services	2008	400	130	23,600	23,100	X
Marty J	Crowley Marine Services	2008	400	105	19,226	18,766	X
MWB 403	HMC Leasing, Inc	1979	400	105	16,322	6,800	X
INTERMAC 600	J. Ray McDermott, Inc	1973	500	120	32,290	15,600	.....
McDermott Tidelands 020	J. Ray McDermott, Inc	1980	240	72	5,186	5,000	X
McDermott Tidelands 021	J. Ray McDermott, Inc	1980	240	72	4,700	2,200	X
McDermott Tidelands 021	J. Ray McDermott, Inc	1981	240	72	5,186	5,000	X
McDermott Tidelands No. 012	J. Ray McDermott, Inc	1973	240	72.2	4,217	4,000	X
McDermott Tidelands No. 014	J. Ray McDermott, Inc	1973	240	72.2	4,217	4,000	X
MARMAC 11	McDonough Marine Service	1994	250	72	4,743	4,200	X
MARMAC 12	McDonough Marine Service	1994	250	72	4,743	4,200	X
MARMAC 15	McDonough Marine Service	1995	250	72	4,743	4,200	X
MARMAC 16	McDonough Marine Service	1995	250	72	4,743	4,200	X
MARMAC 17	McDonough Marine Service	1997	250	72	4,743	4,200	X
MARMAC 18	McDonough Marine Service	1998	250	72	4,743	4,200	X
MARMAC 19	McDonough Marine Service	1999	250	72	4,743	4,200	X
MARMAC 20	McDonough Marine Service	1999	250	72	4,743	4,200	X
MARMAC 21	McDonough Marine Service	2002	260	72	5,163	4,500	X
MARMAC 22	McDonough Marine Service	2003	260	72	5,082	4,500	X
MARMAC 23	McDonough Marine Service	2009	260	72	5,082	4,500	X
MARMAC 24	McDonough Marine Service	2010	260	72	5,082	4,500	X
MARMAC 25	McDonough Marine Service	2010	260	72	5,082	4,500	X
MARMAC 300	McDonough Marine Service	1998	300	100	10,105	9,500	X
MARMAC 301	McDonough Marine Service	1996	300	100	9,553	9,000	X
MARMAC 3018	McDonough Marine Service	1996	318	95′-9″	10,046	9,500	.....
MARMAC 400′	McDonough Marine Service	2001	400	99′-9″	11,272	10,500	X
MARMAC 9	McDonough Marine Service	1993	250	72	4,743	4,200	X
COLUMBIA NORFOLK	Moran Towing	1982	329′ 3 ½″	78	8,036	8,000	X
FAITHFUL SERVANT	Puglia Engineering, Inc	1979	492	131	23,174	23,000	.....
ATLANTA BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
BROOKLYN BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
CHARLOTTE BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
CHICAGO BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
MEMPHIS BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X

[FR Doc. 2012–7993 Filed 4–2–12; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012–0036]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TRE GATTI; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 3, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0036. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m.,

E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TRE GATTI is:

INTENDED COMMERCIAL USE OF VESSEL: ''Our focus will be small groups of 3 to 6 people that would like an introduction to sailing on Puget Sound. These charters will be 4 to 8 hours and begin and end at the marina in Shilshoal. Sometimes we may provide longer charters in order to take people to the San Juan Islands for 3 to 4 days. However the majority of charters will be short day time trips that are not longer than 4 hours in duration providing an exciting sailing experience to our customers.''

GEOGRAPHIC REGION: ''Washington.''

The complete application is given in DOT docket MARAD–2012–0036 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: March 26, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–7977 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012 0039]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel NORDIC STAR; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 3, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0039. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel NORDIC STAR is:

Intended Commercial Use of Vessel: ''Sailing excursions and extended charters.''

Geographic Region: ''Washington, Oregon, California, Alaska (excluding waters in Southeastern Alaska and waters north of a line between Gore Point to Cape Suckling [including the North Gulf Coast and Prince William Sound]), Hawaii.''

The complete application is given in DOT docket MARAD–2012–0039 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: March 27, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–7988 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0040]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel HOLLY DAY; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized

to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 3, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0040. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HOLLY DAY is:

Intended Commercial Use of Vessel: ''Part time carry passengers (not more than six) for dolphin and eco-tours near shore.''

Geographic Region: ''Mississippi, Alabama, Florida.''

The complete application is given in DOT docket MARAD–2012–0040 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

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Dated: March 27, 2012.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–7992 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012–0038]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel RAMBLE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 3, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0038. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RAMBLE is:

Intended Commercial Use of Vessel: ''Chartering and sailing lessons.''

Geographic Region: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Also Puerto Rico.''

The complete application is given in DOT docket MARAD–2012–0038 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: March 26, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–7989 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0037]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LITTLE WING; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 3, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0037. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LITTLE WING is:

Intended Commercial Use of Vessel: ''Charter for no more than 6 passengers.''

Geographic Region: ''MA, RI.''

The complete application is given in DOT docket MARAD–2012–0037 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: March 26, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–7982 Filed 4–2–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''International Regulation—Part 28.'' The OCC is also giving notice that the collection has been sent to OMB for review.

DATES: Comments must be received by May 3, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0102, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC, 250 E Street SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–4700.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0102, by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, or Ira L. Mills, OCC Clearance Officers, (202) 874–5090, or (202) 874–6055, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection without change:

Title: International Regulation—Part 28.

OMB Number: 1557–0102.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

12 CFR Part 28 contains the following collections of information:

12 CFR 28.3 Filing Requirements for Foreign Operations of a National Bank—Notice Requirement. A national bank shall notify the OCC when it:

- Files an application, notice, or report with the FRB to establish or open a foreign branch, or acquire or divest of an interest in, or close, an Edge corporation, Agreement corporation, foreign bank, or other foreign organization.
- Opens a foreign branch, and no application or notice is required by the FRB for such transaction.

In practice, the OCC has also required an application pursuant to section 28.3(c) from a national bank to join a foreign exchange, clearinghouse, or similar type of organization. In lieu of a notice, the OCC may accept a copy of an application, notice, or report

submitted to another Federal agency that covers the proposed action and contains substantially the same information required by the OCC. A national bank shall furnish the OCC with any additional information the OCC may require in connection with the national bank's foreign operations.

12 CFR 28.12(a) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal branch or agency—Approval and Licensing Requirements. A foreign bank shall submit an application to, and obtain prior approval from the OCC before it establishes a Federal branch or agency, or exercises fiduciary powers at a Federal branch.

12 CFR 28.12(e)(2) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal branch or agency—Written Notice for Additional Intrastate Branches or Agencies. A foreign bank shall provide written notice to the OCC 30 days in advance of the establishment of an intrastate branch or agency.

12 CFR 28.12(h) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal Branch or Agency—After-the-fact Notice for Eligible Foreign Banks. A foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an existing bank subsidiary, branch, or agency, may proceed with the transaction and provide after-the-fact notice within 14 days of the transaction to the OCC if (1) the resulting bank is an ''eligible foreign bank'' within the meaning of § 28.12(f) and (2) no Federal branch established by the transaction accepts deposits insured by the FDIC.

12 CFR 28.12(i) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal Branch or Agency—Contraction of Operations. A foreign bank shall provide written notice to the OCC within 10 days after converting a Federal branch into a limited Federal branch or Federal agency.

12 CFR 28.14(c) Limitations Based upon Capital of a Foreign Bank—Aggregation. The foreign bank shall aggregate business transacted by all Federal branches and agencies with the business transacted by all state branches and agencies controlled by the foreign bank in determining its compliance with limitations based upon the capital of the foreign bank. A foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance.

12 CFR 28.15(d), (d)(1), (d)(2), and (f) Capital Equivalency Deposits. Deposit arrangements:

- A foreign bank should require its depository bank to segregate its capital equivalency deposits on the depository bank's books and records.
- The instruments making up the capital equivalency deposit that are placed in safekeeping at a depository bank to satisfy a foreign bank's capital equivalency deposit requirement must be maintained pursuant to an agreement prescribed by the OCC that shall be a written agreement entered into with the OCC.
- Each Federal branch or agency shall maintain a capital equivalency account and keep records of the amount of liabilities requiring capital equivalency coverage in a manner and form prescribed by the OCC.
- A foreign bank's capital equivalency deposits may not be reduced in value below the minimum required for that branch or agency without the prior approval of the OCC, but in no event below the statutory minimum.

12 CFR 28.16(c) Deposit-taking by an Uninsured Federal branch—Application for an Exemption. A foreign bank may apply to the OCC for an exemption to permit an uninsured Federal branch to accept or maintain deposit accounts that are not listed in paragraph (b) of this section. The request should describe:

- The types, sources, and estimated amount of such deposits and explain why the OCC should grant an exemption;
- How the exemption maintains and furthers the policies described in paragraph (a) of this section.

12 CFR 28.16(d) Deposit taking by an uninsured Federal branch—Aggregation of deposits. A foreign bank that has more than one Federal branch in the same state may aggregate deposits in all of its Federal branches in that state, but exclude deposits of other branches, agencies or wholly owned subsidiaries of the bank. The Federal branch shall compute the average amount by using the sum of deposits as of the close of business of the last 30 calendar days ending with and including the last day of the calendar quarter, divided by 30. The Federal branch shall maintain records of the calculation until its next examination by the OCC.

12 CFR 28.17 Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Notice of Change in Activity or Operations. A Federal branch or agency shall notify the OCC if it changes its corporate title; changes its mailing address; converts to a state branch, state agency, or representative office; or the parent foreign bank changes the designation of its home state.

12 CFR 28.18(c)(1) Recordkeeping and Reporting—Maintenance of Accounts, Books, and Records. Each Federal branch or agency shall maintain a set of accounts and records reflecting its transactions that are separate from those of the foreign bank and any other branch or agency. The Federal branch or agency shall keep a set of accounts and records in English sufficient to permit the OCC to examine the condition of the Federal branch or agency and its compliance with applicable laws and regulations.

12 CFR 28.20(a)(1) Maintenance of Assets—General Rule. The OCC may require a foreign bank to hold certain assets in the state in which its Federal branch or agency is located.

12 CFR 28.22 (b) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Voluntary Liquidation Notice to customers and creditors. A foreign bank shall publish notice of the impending closure of each Federal branch or agency for a period of two months in every issue of a local newspaper where the Federal branch or agency is located. If only weekly publication is available, the notice must be published for nine consecutive weeks.

12 CFR 28.22(e) Reports of Examination. The Federal branch or agency shall send the OCC certification that all of its Reports of Examination have been destroyed or return its Reports of Examination to the OCC.

12 CFR 28.25(a) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Change in Control—After-the-fact Notice. In cases where no other filing is required, a foreign bank that operates a Federal branch or agency shall inform the OCC in writing of the direct or indirect acquisition of control of the foreign bank by any person or entity, or group of persons or entities acting in concert, within 14 calendar days after the foreign bank becomes aware of a change in control.

12 CFR 28.52 Covered Under Information Collection 1557–0081 (MA)—Reports of Condition and Income (Interagency Call Report), FFIEC 031, FFIEC 041 Allocated Transfer Risk Reserve. A banking institution shall establish an allocated transfer risk reserve for specified international assets when required by the OCC in

accordance with the requirements of the section.

12 CFR 28.54 Covered under Information Collection 1557–0100 Country Exposure Report and Country Exposure Information Report (FFIEC 009, FFIEC 009a) Reporting and Disclosure of International Assets. A banking institution shall submit to the OCC, at least quarterly, information regarding the amounts and composition of its holdings of international assets. A banking institution shall submit to the OCC information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 79.

Estimated Total Annual Responses: 117.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,661.5

The OCC issued a 60-day **Federal Register** notice on January 20, 2012 (77 FR 3032). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 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.

Dated: March 28, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–7983 Filed 4–2–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Privacy Act of 1974, as Amended; System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Office of the Comptroller of the Currency, Treasury, is publishing its Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, the Comptroller of the Currency (OCC) has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records.

This publication incorporates the amendments to Treasury/CC.210—Bank Securities Dealers System; Treasury/CC.220—Notices of Proposed Changes in Employees, Officers and Directors Tracking System (formerly Treasury/CC.220—Section 914 Tracking System); and Treasury/CC.600—Consumer Complaint and Inquiry Information System that were published on September 13, 2011, at 76 FR 56501. This publication also incorporates the Privacy Act systems of records that were formerly Office of Thrift Supervision systems, which the OCC adopted on July 26, 2011, at 76 FR 44656. Other changes throughout the document are editorial in nature and consist principally of revising address information and minor editorial changes. The OCC's systems of records were last published in their entirety on July 18, 2008, at 73 FR 41402–01. The OTS' systems of records were last published in their entirety on June 29, 2009, at 74 FR 31103.

The OCC also gives notice that five OTS systems of records have been retired. Treasury/OTS.001—Confidential Individual Information System and Treasury/OTS.004—Criminal Referral Database, a component of Treasury/OTS.001, were retired by OTS in 1999 and the data contained in these systems was transferred to encrypted CDs that have been archived. Treasury/OTS.005—Employee Counseling Service was a paper-based system that was retired by OTS no later than 2000. The records in that system were destroyed by OTS. Treasury/OTS.008—Employee Training Database was retired by OTS. The data was migrated to the Treasury Learning Management System (TLMS). Any data that could not be transferred to TLMS was archived. Treasury/OTS.011—Positions/Budget was retired by OTS and the data has been archived. The notices pertaining to the five systems of records above, are removed from the Department's inventory of Privacy Act issuances.

Department of the Treasury regulations require the Department to publish the existence and character of all systems of records every three years (31 CFR 1.23(a)(1)). With respect to its inventory of Privacy Act systems of records, the OCC has determined that the information contained in its systems of records is accurate, timely, relevant, complete, and is necessary to maintain the proper performance of a documented agency function.

Systems Covered by This Notice

This notice covers all systems of records adopted by the OCC up to September 13, 2011. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: March 28, 2012.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency and Records.

The Comptroller of the Currency (OCC)

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TREASURY/CC .100

SYSTEM NAME:

Enforcement Action Report System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Enforcement and

Compliance Division, 250 E Street SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are: (1) Current and former directors, officers, employees, shareholders, and independent contractors of financial institutions who have had enforcement actions taken against them by the OCC, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration;

(2) Current and former directors, officers, employees, shareholders, and independent contractors of financial institutions who are the subjects of pending enforcement actions initiated by the OCC; and

(3) Individuals who must obtain the consent of the Federal Deposit Insurance Corporation pursuant to 12 U.S.C. 1829 to become or continue as an institution-affiliated party within the meaning of 12 U.S.C. 1813(u) of a federally-insured depository institution, a direct or indirect owner or controlling person of such an entity, or a direct or indirect participant in the conduct of the affairs of such an entity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of individuals, their positions or titles with financial institutions, descriptions of offenses and enforcement actions, and descriptions of offenses requiring Federal Deposit Insurance Corporation approval under 12 U.S.C. 1829.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i.

PURPOSE:

This system of records is used by the OCC to monitor enforcement actions and to assist it in its regulatory responsibilities, including review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of CC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity when the information is relevant to the entity's operations;

(2) Third parties to the extent necessary to obtain information that is relevant to an examination or investigation;

(3) The news media in accordance with guidelines contained in 28 CFR 50.2;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(8) Third parties when mandated or authorized by statute, or

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Enforcement and Compliance Division, Law Department, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from OCC

personnel, OCC-regulated entities, other federal financial regulatory agencies, and criminal law enforcement authorities.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

TREASURY/CC .110

SYSTEM NAME:

Reports of Suspicious Activities—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Enforcement and Compliance Division, 250 E Street SW., Washington, DC 20219–0001. Suspicious Activity Reports (SARs) are managed by the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, and stored at the IRS Computing Center in Detroit, Michigan. Information extracted from or relating to SARs or reports of crimes and suspected crimes is maintained in an OCC electronic database. This database, as well as the database managed by FinCEN, is accessible to designated OCC headquarters and district office personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who have been designated as suspects or witnesses in SARs or reports of crimes and suspected crimes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the name of the entity to which a report pertains, the names of individual suspects and witnesses, the types of suspicious activity involved, and the amounts of known losses. Other records maintained in this system may contain arrest, indictment and conviction information, and information relating to administrative actions taken or initiated in connection with activities reported in a SAR or a report of crime and suspected crime.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i; 31 U.S.C. 5318.

PURPOSE:

This system of records is used by the OCC to monitor criminal law enforcement actions taken with respect to known or suspected criminal activities affecting OCC-regulated entities. System information is used to determine whether matters reported in SARs warrant the OCC's supervisory action. Information in this system also may be used for other supervisory and licensing purposes, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) The Department of Justice through periodic reports containing the identities of individuals suspected of having committed violations of criminal law;

(2) An OCC-regulated entity if the SAR relates to that institution;

(3) Third parties to the extent necessary to obtain information that is relevant to an examination or investigation;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation and supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(5) An appropriate governmental, international, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(8) Third parties when mandated or authorized by statute, or

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESS:

Director, Special Supervision Division, Midsize/Community Bank Supervision, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document

bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from CC personnel, OCC-regulated entities, other financial regulatory agencies, criminal law enforcement authorities, and FinCEN.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), and (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/CC .120

SYSTEM NAME:

Bank Fraud Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Bank Supervision Operations, 250 E Street SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who submit complaints or inquiries about fraudulent or suspicious financial instruments or transactions or who are the subjects of complaints or inquiries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain: The name, address, or telephone number of the individual who submitted a complaint or inquiry; the name, address, or telephone number of the individual or entity who is the subject of a complaint or inquiry; the types of activity involved; the date of a complaint or inquiry; and numeric codes identifying a complaint or inquiry's nature or source. Supporting records may contain correspondence between the OCC and the individual or entity submitting a complaint or inquiry, correspondence between the OCC and an OCC-regulated entity, or correspondence between the OCC and other law enforcement or regulatory bodies. Other records maintained in this system may contain arrest, indictment and conviction information, and information relating to administrative actions taken or initiated in connection with complaints or inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i; 31 U.S.C. 5318.

PURPOSE:

This system of records tracks complaints or inquiries concerning fraudulent or suspicious financial instruments and transactions. These records assist the OCC in its efforts to protect banks and their customers from fraudulent or suspicious banking activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity to the extent that such entity is the subject of a complaint, inquiry, or fraudulent activity;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of a complaint or inquiry, an examination, or an investigation;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, international, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(8) Third parties when mandated or authorized by statute, or

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically, in card files, and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Special Supervision, Bank Supervision Operations, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt

records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR part 1, subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature. Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals and entities who submit complaints or inquiries, OCC personnel, OCC-regulated entities, criminal law enforcement authorities, and governmental or self-regulatory bodies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/CC .200

SYSTEM NAME:

Chain Banking Organizations System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Operations Risk Policy, 250 E Street, SW., Washington, DC 20219–0001, and the OCC's district offices as follows:

Central District Office, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605–1073;

Northeastern District Office, 340 Madison Avenue, Fifth Floor, New York, NY 10017–2613;

Southern District Office, 500 North Akard Street, Suite 1600, Dallas, TX 75201–3394; and

Western District Office, 1225 17th Street, Suite 300, Denver, CO 80202–5534.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who directly, indirectly, or acting through or in concert with one or more other individuals, own or control a chain banking organization. A chain banking organization exists when two or more independently chartered financial institutions, including at least one OCC-regulated entity, are controlled either directly or indirectly by the same individual, family, or group of individuals closely associated in their business dealings. Control generally exists when the common ownership has the ability or power, directly or indirectly, to:

(1) Control the vote of 25 percent or more of any class of an organization's voting securities;

(2) Control in any manner the election of a majority of the directors of an organization; or

(3) Exercise a controlling influence over the management or policies of an organization. A registered multibank holding company and its subsidiary banks are not ordinarily considered a chain banking group unless the holding company is linked to other banking organizations through common control.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system contain the names of individuals who, either alone or in concert with others, own or control a chain banking organization. Other information may contain: The name, location, charter number, charter type, and date of last examination of each organization comprising a chain; the percentage of outstanding stock owned or controlled by controlling individuals or groups; and the name of any intermediate holding entity and the percentage of such entity owned or controlled by the individual or group.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, 1817(j), and 1820.

PURPOSE:

Information maintained in this system is used by the OCC to carry out its supervisory responsibilities with respect to national banks and District of Columbia banks operating under the OCC's regulatory authority, including the coordination of examinations, supervisory evaluations and analyses, and administrative enforcement actions with other financial regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity when information is relevant to the entity's operation;

(2) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(3) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within the organization's jurisdiction;

(4) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(5) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(6) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(7) Third parties when mandated or authorized by statute, or

(8) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made

to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Operational Risk Policy, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC personnel, other Federal financial regulatory agencies, and individuals who file notices of their intention to acquire control over an OCC-regulated financial institution.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/CC .210

SYSTEM NAME:

Bank Securities Dealers System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Credit and Market Risk, 250 E Street SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who are or seek to be associated with a municipal securities dealer or a government securities broker/dealer that is a national bank, Federal savings association, a District of Columbia savings association operating under the OCC's regulatory authority, or a department or division of any such bank or savings association in the capacity of a municipal securities principal, municipal securities representative, or government securities associated person.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain an individual's name, address history, date and place of birth, social security number, educational and occupational history, certain professional qualifications and testing information, disciplinary history, or information about employment termination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1 (as amended), 481, 1464, 1818, and 1820; 15 U.S.C. 78o-4, 78o-5, 78q, and 78w.

PURPOSE:

This system of records will be used by the OCC to carry out its responsibilities under the Federal securities laws relating to the professional qualifications and fitness of individuals who engage or propose to engage in securities activities on behalf of national banks, Federal savings associations, and District of Columbia savings associations operating under the OCC's regulatory authority.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH SYSTEMS:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity in connection with its filing relating to the qualifications and fitness of an individual serving or proposing to serve the entity in a securities-related capacity;

(2) Third parties to the extent needed to obtain additional information concerning the professional qualifications and fitness of an individual covered by the system;

(3) Third parties inquiring about the subject of an OCC enforcement action;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become involved in the provider's securities business;

(5) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(8) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(9) Third parties when mandated or authorized by statute, or

(10) Appropriate agencies, entities, and persons when (a) the Department

suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to the electronic database is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Deputy Comptroller, Credit and Market Risk, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC-regulated entities that are: Municipal securities dealers and/or government securities brokers/dealers; individuals who are or propose to become municipal securities principals, municipal securities representatives, or government securities associated persons; or governmental and self-regulatory organizations that regulate the securities industry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/CC .220

SYSTEM NAME:

Notices of Proposed Changes in Employees, Officers and Directors Tracking System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Special Supervision, 250 E Street SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who are named in notices filed: (1) under 12 CFR 5.51 as proposed directors or senior executive officers of a national bank, or federal branches of foreign banks (Section 5.51-regulated entities) when the entities:

(a) Have a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System;

(b) Are subject to cease and desist orders, consent orders, or formal written agreements, unless otherwise informed in writing by the OCC;

(c) Have been determined, in writing, by the OCC to be in ''troubled condition;''

(d) Are not in compliance with minimum capital requirements prescribed under 12 CFR Part 3; or

(e) Have been advised by the OCC, in connection with its review of an entity's capital restoration plan, that such filings are appropriate.

(2) Under 12 CFR 5.20(g)(2) as proposed officers or directors of national banks (Section 5.20(g)(2) entities) for a two-year period from the date they commence business.

(3) under 12 CFR 163, Subpart H (previously 12 CFR 563, Subpart H) as proposed directors or senior executive officers of Federal savings associations (Part 163, Subpart H entities) when the entities:

(a) Are not in compliance with minimum capital requirements prescribed under 12 CFR 167 (previously 12 CFR 567);

(b) Have a composite rating of 4 or 5 under the Uniform Financial Institutions Rating system;

(c) Are subject to capital directives, cease and desist orders, consent orders, formal written agreements, or prompt corrective action directives relating to the safety and soundness or financial viability of the federal savings association, unless otherwise informed I writing by the OCC;

(d) Have been determined in writing by the OCC to be in ''troubled condition;'' or

(e) Have been advised by the OCC, in connection with its review of an entity's capital restoration plan required by 12 U.S.C. 1831o, that such notice is required.

(4) pursuant to 12 U.S.C. 1818(b) as proposed employees of national banks, Federal savings associations or any other entity subject to the OCC's jurisdiction (1818(b) entities), other than employees covered by 12 CFR 5.51 or 12 CFR 163, Subpart H, when required to do so pursuant to 12 U.S.C. 1818(b).''

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this electronic database may contain: the names, charter numbers, and locations of the OCC-regulated entities that have submitted notices; the names, addresses, dates of birth, and social security numbers of individuals proposed as either directors or senior executive

officers; and the actions taken by the OCC in connection with these notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1 (as amended), 27, 93a, 481, 1464, 1817(j), 1818, 1820, and 1831i.

PURPOSE:

Information maintained in this system is used by the OCC to carry out its statutory and other regulatory responsibilities, including other reviews of the qualifications and fitness of individuals who propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An Section 5.51 entity, a Section 5.20(g)(2) entity, a Part 163, Subpart H entity, or a Section 1818(b) entity in connection with review and action on a notice filed by that entity;

(2) Third parties to the extent necessary to obtain information that is pertinent to the OCC's review and action on a notice received under any authority cited herein;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(8) Third parties when mandated or authorized by statute, or

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Deputy Comptroller, Special Supervision, Bank Supervision Operations, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document).

An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature. Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC-regulated entities, individuals named in notices filed pursuant to 5 CFR 5.51, Federal or State financial regulatory agencies, criminal law enforcement authorities, credit bureaus, and OCC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C.

TREASURY/CC 340

SYSTEM NAME:

Access Control System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Security Office, Office of Management, 250 E Street SW., Washington, DC 20219–001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are OCC employees, contractors, agents, and volunteers who have been issued an OCC identification card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain an individual's name, location information, picture, and

authorizations to use the OCC's fitness facility or its headquarters parking garage, if applicable. This system of records also may contain time records of entrances and exits and attempted entrances and exits of OCC premises.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, and 482; 5 U.S.C. 301.

PURPOSE:

The OCC has an access control system linked to identification cards which limits access to its premises to authorized individuals and records the time that individuals are on the premises. This system of records is used to assist the OCC in maintaining the security of its premises and to permit the OCC to identify individuals on its premises at particular times.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) Third parties to the extent necessary to obtain information that is relevant to an investigation concerning access to or the security of the OCC's premises;

(2) An appropriate governmental authority if the information is relevant to a known or suspected violation of a law within that organization's jurisdiction;

(3) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(4) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(5) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(6) Third parties when mandated or authorized by statute, or

(7) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records Management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Critical Infrastructure Protection and Security (CIPS), Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals and the OCC's official personnel records. Information concerning entry and exit of OCC premises is obtained from identification card scanners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/CC .500

SYSTEM NAME:

Chief Counsel's Management Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, 250 E Street SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are: Individuals who have requested information or action from the OCC; parties or witnesses in civil proceedings or administrative actions; individuals who have submitted requests for testimony and/or production of documents pursuant to 12 CFR part 4, Subpart C; individuals who have been the subjects of administrative actions or investigations initiated by the OCC, including current or former shareholders, directors, officers, employees and agents of OCC-regulated entities, current, former, or potential bank customers, and OCC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of: Banks; requestors; parties; witnesses; current or former shareholders; directors, officers,

employees and agents of OCC-regulated entities; current, former or potential bank customers; and current or former OCC employees. These records contain summarized information concerning the description and status of Law Department work assignments. Supporting records may include pleadings and discovery materials generated in connection with civil proceedings or administrative actions, and correspondence or memoranda related to work assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 93(d) (second), 481, 1818, and 1820.

PURPOSE:

This system of records is used to track the progress and disposition of OCC Law Department work assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity involved in an assigned matter;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of an assigned matter;

(3) The news media in accordance with guidelines contained in 28 CFR 50.2;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(5) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(8) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(9) Third parties when mandated or authorized by statute, or

(10) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Executive Assistant to the Chief Counsel, Law Department, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals who request information or action from the OCC, individuals who are involved in legal proceedings in which the OCC is a party or has an interest, OCC personnel, and OCC-regulated entities and other entities, including governmental, tribal, self-regulatory, and professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/CC .510

SYSTEM NAME:

Litigation Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, Litigation Division, 250 E Street SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are parties or witnesses in civil proceedings or administrative actions, and individuals who have submitted requests for testimony or the production of documents pursuant to 12 CFR part 4, Subpart C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system are those generated in connection with civil proceedings or administrative actions, such as discovery materials, evidentiary materials, transcripts of testimony, pleadings, memoranda, correspondence, and requests for information pursuant to 12 CFR part 4, Subpart C.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 93(d) (second), 481, 1818, and 1820.

PURPOSE:

This system of records is used by the OCC in representing its interests in legal actions and proceedings in which the OCC, its employees, or the United States is a party or has an interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) Third parties to the extent necessary to obtain information that is relevant to the subject matter of civil proceedings or administrative actions involving the OCC;

(2) The news media in accordance with guidelines contained in 28 CFR 50.2;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(8) Third parties when mandated or authorized by statute, or

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

System records are maintained in locked file cabinets or rooms and in electronic format on secure drives and media.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Litigation Division, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from: Individuals or entities involved in legal proceedings in which the OCC is a party or has an interest; OCC-regulated entities; and governmental, tribal, self-regulatory or professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/CC .600

SYSTEM NAME:

Consumer Complaint and Inquiry Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010–3034.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who submit complaints or inquiries about national banks, Federal Savings Associations, District of Columbia savings associations operating under OCC's regulatory authority, federal branches and agencies of foreign banks, or subsidiaries of any such entity (OCC-regulated entities), and other entities that the OCC does not regulate. This includes individuals who file complaints and inquiries directly with the OCC or through other parties, such as attorneys, members of Congress, or other governmental organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain: The name and address of the individual who submitted the complaint or inquiry; when applicable, the name of the individual or organization referring a matter; the name of the entity that is the subject of the complaint or inquiry; the date of the incoming correspondence and its receipt; numeric codes identifying the complaint or inquiry's nature, source, and resolution; the OCC office and personnel assigned to review the correspondence; the status of the review; the resolution date; and, when applicable, the amount of reimbursement. Supporting records may contain correspondence between the OCC and the individual submitting the complaint or inquiry, correspondence between the OCC and the regulated entity, and correspondence between the OCC and other law enforcement or regulatory bodies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1 (as amended), 481, 1464 and 1820; 15 U.S.C. 41 et seq.

PURPOSE:

This system of records is used to administer the OCC's Customer Assistance Program and to track the processing and resolution of complaints and inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity that is the subject of a complaint or inquiry;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of a complaint or inquiry;

(3) The appropriate governmental, tribal, self-regulatory or professional organization if that organization has jurisdiction over the subject matter of the complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A Congressional office or appropriate governmental or tribal organization when the information is relevant to a complaint or inquiry referred to the OCC by that office or organization on behalf of the individual about whom the information is maintained;

(7) An appropriate governmental or tribal organization in communication with the OCC about a complaint or inquiry the organization has received concerning the actions of an OCC-regulated entity. Information that may be disclosed under this routine use will ordinarily consist of a description of the conclusion made by the OCC concerning the actions of such an entity and the corrective action taken, if any;

(8) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(9) Third parties when mandated or authorized by statute, or

(10) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director for Ombudsman Operation, CAG Remedy System Owner, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for

notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals and entities filing complaints and inquiries, other governmental authorities, and OCC-regulated entities that are the subjects of complaints and inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

TREASURY/CC .700

SYSTEM NAME:

Correspondence Tracking System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, 250 E Street, SW., Washington, DC 20219–0001. Components of this record system are maintained in the Comptroller of the Currency's Office and the Chief Counsel's Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those whose correspondence is submitted to the Comptroller of the Currency or the Chief Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of individuals who correspond with the OCC, information concerning the subject matter of the correspondence, correspondence disposition information, correspondence tracking dates, and internal office assignment information. Supporting records may contain correspondence between the OCC and the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1; 5 U.S.C. 301.

PURPOSE:

This system of records is used by the OCC to track the Comptroller of the Currency's or the Chief Counsel's correspondence, including the progress and disposition of the OCC's response.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) The OCC-regulated entity involved in correspondence;

(2) Third parties to the extent necessary to obtain information that is relevant to the response;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(8) Third parties when mandated or authorized by statute, or

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Electronic and other records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESSES:

Executive Assistant to the Comptroller, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. Special Assistant to the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature (such as credit cards). Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties

provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who submit correspondence and OCC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .002

SYSTEM NAME:

Correspondence/Correspondence Tracking.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

White House and Executive Office of the President officials, Members of Congress, Treasury Department officials, the general public, and businesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence addressed to the Director of OTS, letters from members of Congress transmitting letters from constituents or making inquiries, OTS responses, OTS memoranda and notes used to prepare responses, and information concerning internal office assignments, processing, and responses to the correspondence.

PURPOSE(S):

To maintain written records of correspondence addressed to the Director of OTS and congressional correspondence; to track the progress of the response; and to document the completion of the response to the incoming correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used to:

(1) Make disclosures to a congressional office from the records of an individual in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Disclose information to the appropriate governmental agency charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order, or license;

(3) Disclose information in civil, criminal, administrative or arbitration proceedings before a court, magistrate, administrative or arbitration tribunal, in the course of pre-trial discovery, motions, trial, appellate review, or in settlement negotiations, when OTS, the Director of OTS, an OTS employee, the Department of the Treasury, the Secretary of the Treasury, or the United States is a party or has an interest in or is likely to be affected by such proceeding and an OTS attorney determines that the information is arguably relevant to that proceeding;

(4) Disclose relevant information to the Department of Justice, private counsel, or an insurance carrier for the purpose of defending an action or seeking legal advice, to assure that the agency and its employees receive appropriate representation in legal proceedings;

(5) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic media and in paper files.

RETRIEVABILITY:

Records are maintained by name of individual; assignment control number.

SAFEGUARDS:

Access to paper records is limited to authorized personnel with a direct need to know. Some paper records are maintained in locked file cabinets in a secured office with access limited to those personnel whose official duties require access. Access to computerized records is limited, through the use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Computerized records relating to non-congressional correspondence are retained for two (2) years after the Director's term. Computerized records relating to congressional correspondence are kept permanently. Paper records are retained for two (2) years after the Director's or member of Congress' term, then transferred directly to the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant to the Comptroller, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. Special Assistant to the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Congressional letters and responses from a Member of Congress and/or a constituent.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .003

SYSTEM NAME:

OTS Consumer Complaint System.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E St. SW., Washington, DC, 20219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who submit inquiries or complaints concerning Federally insured depository institutions, service corporations, and subsidiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consumer's name, savings association's docket number, case number as designated by a Consumer Complaint Case number. Within these categories of records, the following information may be obtained: consumer's address, source of inquiry or complaint, nature of the inquiry or complaint, nature of the inquiry or complaint designated by instrument and complaint code, information on the investigation and resolution of inquiries and complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 57a(f), 5 U.S.C. 301.

PURPOSE(S).

OTS uses this system to track individual complaints and to provide additional information about each institution's compliance with regulatory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used to:

(1) Disclose information to officials of regulated savings associations in connection with the investigation and resolution of complaints and inquiries;

(2) Make relevant information available to appropriate law enforcement agencies or authorities in connection with the investigation and/or prosecution of alleged civil, criminal, and administrative violations;

(3) Disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to other Federal and nonfederal governmental supervisory or regulatory authorities when the subject matter is within such other agency's jurisdiction;

(5) Disclose information in civil, criminal, administrative or arbitration proceedings before a court, magistrate, administrative or arbitration tribunal, in the course of pre-trial discovery, motions, trial, appellate review, or in settlement negotiations, when OTS, the Director of OTS, an OTS employee, the Department of the Treasury, the Secretary of the Treasury, or the United States is a party or has an interest in or is likely to be affected by such proceeding and an OTS attorney determines that the information is arguably relevant to that proceeding;

(6) Disclose relevant information to the Department of Justice, private counsel, or an insurance carrier for the purpose of defending an action or seeking legal advice, to assure that the agency and its employees receive appropriate representation in legal proceedings;

(7) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on electronic media.

RETRIEVABILITY:

By name of individual, complaint case number, savings association name, docket number, region complaint code, instrument code, source code, or by some combination thereof.

SAFEGUARDS:

Paper records are maintained in locked file cabinets with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of the system passwords, to those whose official duties require access.

RETENTION AND DISPOSAL:

Active paper files are maintained until the case is closed. Closed files are retained six (6) years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Ombudsman, Office of the Comptroller of the Currency, 250 E St. SW., Washington, DC 20219.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Inquirer or complainant (or his or her representative which may include a member of Congress or an attorney); savings association officials and employees; compliance/safety and soundness examiner(s); and other supervisory records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .006

SYSTEM NAME:

Employee Locator File.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the former OTS and persons whose employment has been terminated within the last six months. This system is being maintained by the OCC for historical purposes. The OCC will not be adding any records to the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, present address, telephone number, and the name, address, and telephone number of another person to notify in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

This system provides current information on employee's address and emergency contact person.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used to:

(1) Disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Provide information to medical personnel in case of an emergency;

(3) Disclose information in civil, criminal, administrative or arbitration proceedings before a court, magistrate, administrative or arbitration tribunal, in the course of pre-trial discovery, motions, trial, appellate review, or in settlement negotiations, when OTS, the Director of OTS, an OTS employee, the Department of the Treasury, the Secretary of the Treasury, or the United States is a party or has an interest in or is likely to be affected by such proceeding and an OTS attorney determines that the information is arguably relevant to that proceeding;

(4) Disclose relevant information to the Department of Justice, private counsel, or an insurance carrier for the purpose of defending an action or seeking legal advice, to assure that the agency and its employees receive appropriate representation in legal proceedings;

(5) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

System access is limited to those personnel whose official duties require such access and who have a need to know information in a record for a particular job-related purpose. Access to computerized records is limited, through use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are maintained until termination of employee's employment with OTS. After termination, records are retained for six months then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Thrift Supervision Application Delivery, 400 7th Street SW., Washington, DC 20024

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

The individual whose record is being maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .012

SYSTEM NAME:

Payroll/Personnel System & Payroll Records.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This is a legacy OTS system. It contains information about individuals

who were formerly employed by the OTS and may or may not now be employed by the OCC. The records being maintained are available for read access only and for historical purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to (1) employee status, grade, salary, pay plan, hours worked, hours of leave taken and earned, hourly rate, gross pay, taxes, deductions, net pay, location, and payroll history; (2) employee's residence, office, social security number, and address; (3) Personnel actions (SF–50), State employees' withholding exemption certificates, Federal employees' withholding allowance certificates (W4), Bond Allotment File (SF–1192), Federal Employee's Group Life Insurance (SF–2810 and 2811), Savings Allotment-Financial Institutions, Address File (OTS Form 108), Union Dues Allotment, time and attendance reports, individual retirement records (SF–2806), Combined Federal Campaign allotment, direct deposit, health benefits, and thrift investment elections to either the Federal Thrift Savings Plan (TSP–1) or OTS's Financial Institutions Thrift Plan (FITP–107 and K 1–2).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

Provided all the key personnel and payroll data for each employee which is required for a variety of payroll and personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) In the event that records maintained in this system of records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of implementing the statute, or rule or regulation or order issued pursuant thereto.

(2) A record from this system may be disclosed to other Federal agencies and the Office of Personnel Management if necessary for or regarding the payment of salaries and expenses incident to employment at the Office of Thrift Supervision or other Federal employment, or the vesting, computation, and payment of retirement or disability benefits.

(3) A record from this system may be disclosed if necessary to support the assessment, computation, and collection of Federal, State, and local taxes, in accordance with established procedures.

(4) Disclosure of information may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(5) Records from this system may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

(6) Information from these records may be disclosed in civil, criminal, administrative or arbitration proceedings before a court, magistrate, administrative or arbitration tribunal, in the course of pre-trial discovery, motions, trial, appellate review, or in settlement negotiations, when OTS, the Director of OTS, an OTS employee, the Department of the Treasury, the Secretary of the Treasury, or the United States is a party or has an interest in or is likely to be affected by such proceeding and an OTS attorney determines that the information is arguably relevant to that proceeding.

(7) Relevant information may be disclosed to the Department of Justice, private counsel, or an insurance carrier for the purpose of defending an action or seeking legal advice, to assure that the agency and its employees receive appropriate representation in legal proceedings.

(8) Information may be disclosed to respond to State and local authorities in connection with garnishment proceedings;

(9) Information may be disclosed to private creditors for the purpose of garnishment of wages of an employee if the debt has been reduced to a judgment.

(10) Information may be disclosed to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media, microfiche, and in paper files.

RETRIEVABILITY:

Records are filed by individual name, social security number and by office.

SAFEGUARDS:

Paper and microfiche records are maintained in secured offices and access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose. Access to computerized records is limited, through the use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration Approved Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Accounting, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport

or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Personnel and payroll records of current and former employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .013

SYSTEM NAME:

Mass Communication System.

SYSTEM LOCATION:

The system is hosted at a contractor site in Burbank, California. The address of the contractor may be obtained by writing to the system manager below.

CATEGORIES OF INDIVIDUALS COVERED:

All employees of The Office of the Comptroller of the Currency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, home phone number, personal cell phone number, personal email address, official business phone number, official business email address, official business cell phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12148, *Federal Emergency Management*.

PURPOSE:

The OCC Security Office will use the Mass Communication System to communicate with OCC personnel during and after local, regional or national emergency events, communicate with staff during and after security incidents, disseminate time sensitive information to staff, provide Human Resources and OCC Leadership with employee accountability status during emergency events, and conduct communication tests. The system is a managed service that is hosted at a contractor site. The system will allow Security staff and other authorized individuals to send messages to the OCC workforce and receive confirmation back from staff in order to help senior management assess the availability of staff during times of emergency. Employees have the right to decline to provide personal information, however, their official business contact information is entered into the system through an automated upload.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used to:

(1) Make disclosures to a congressional office from the records of an individual in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

(3) A contractor for the purpose of full filling a contract, compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act.

(4) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format at the service provider's site.

RETRIEVABILITY:

Records are retrieved by OCC office and individual name.

SAFEGUARDS:

Safeguards in place to prevent misuse of data include: role-based user access, the use of user ID and authorization code to access the Web site, monitoring of application access and database access, encryption of passwords stored in the database, and physical access controls to the building housing the system.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director of Critical Infrastructure Protection & Security, 250 E St. SW., Washington, DC 20219.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from OCC personnel, OCC-regulated entities, other federal financial regulatory agencies, and criminal law enforcement authorities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .015

SYSTEM NAME:

Retiree Billing System.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E St. SW., Washington, DC 20219.

CATEGORIES OF INDIVIDUALS COVERED:

Former OTS Financial Institutions Retirement Fund (FIRF) retirees and OTS employees retiring under the Civil Service Retirement System or the Federal Employees Retirement System and who participate in the OTS-sponsored life insurance plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

Former OTS employee retirees' names, home phone numbers, mailing addresses, email addresses, and bank account numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 12 U.S.C. 1462a (h).

PURPOSE:

The OTS Retiree Billing system was used to bill insurance premiums to both Financial Institutions Retirement Fund (FIRF) employees and employees who retired from OTS and had the OTS sponsored life insurance. The system is used by Payroll Accounting Specialists in the Human Resources office. Retiree name and bank account information was shared with the Financial Management Services (FMS), which is another bureau of the Treasury Department, so that retirees could be properly billed for health/insurance premiums. FMS provided Automated Clearing House (ACH) debit services on behalf of OTS; OTS provides FMS with retiree information so that FMS could perform a debit on the bank account of the retiree for the funds owed to OTS and deposit the money into an OTS account. This system is now maintained only for historical search purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used to:

(1) Make disclosures to a congressional office from the records of an individual in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

(3) A contractor for the purpose of full filling a contract, compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act.

(4) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format.

RETRIEVABILITY:

Records are retrieved by retirees' names or social security numbers.

SAFEGUARDS:

Safeguards in place to prevent misuse of data include: role-based user access, the use of userid and authorization code to access the system, and locking paper files when not in use.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Compensation and Benefits, Office of Human Resources, 250 E St. SW., Washington, DC 20219.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, Mailstop 2–3, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001. See 31 CFR part 1, Subpart C, Appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

OTS retirees and OTS payroll and personnel systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–7950 Filed 4–2–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Proposed Collection of Information: Voucher for Payment of Awards

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''Voucher for Payment of Awards.''

DATES: Written comments should be received on or before June 4, 2012.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kevin McIntyre, Manager, Judgment Fund Branch, 3700 East-West Highway, Room 630F, Hyattsville, MD 20782, (202) 874–1130.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Voucher for Payment of Awards.

OMB Number: 1510–0037.

Form Number: TFS 5135.

Abstract: Awards certificate to Treasury are paid annually as funds are received from foreign governments. Vouchers are mailed to award holders showing payments due. Award holders sign vouchers certifying that he/she is entitled to payment. Executed vouchers are used as a basis for payment.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,400.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 700.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: March 21, 2012.

Patricia M. Greiner,

Assistant Commissioner, Management, CFO.

[FR Doc. 2012–7870 Filed 4–2–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Proposed Collection of Information: Claims Against the United States for Amounts Due in the Case of a Deceased Creditor

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning ''Claims Against the United States for Amounts Due in the Case of a Deceased Creditor''.

DATES: Written comments should be received on or before June 4, 2012.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kevin McIntyre, Judgment Fund Branch, 3700 East West Highway, Room 630F, Hyattsville, MD 20782, (202) 874–1130.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Claim Against the United States for Amounts Due in the Case of a Deceased Creditor.

OMB Number: 1510–0042.

Form Number: SF–1055.

Abstract: This form is required to determine who is entitled to the funds of a deceased Postal Savings depositor or deceased award holder. The form, with supporting documentation, enables the government to decide who is legally entitled to payment.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 400.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: March 21, 2012.

Patricia M. Greiner,

Assistant Commissioner, Management, CFO.

[FR Doc. 2012–7877 Filed 4–2–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Change for Paying Agents Redeeming Definitive Savings Bonds and Savings Notes

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: Effective April 11, 2012, the Department of the Treasury will no longer pay fees to paying agents for redeeming definitive savings bonds and savings notes. The purpose of this change is to reduce Treasury's program costs.

DATES: Effective Date: April 11, 2012.

ADDRESSES: A copy of this Notice is available at *http://www.gpoaccess.gov/fr.*

FOR FURTHER INFORMATION CONTACT:

D. Michael Linder, Director, Division of Program Administration, Office of Retail Securities, Bureau of the Public Debt, at (304) 480–6319 or <*mike.linder@bpd.treas.gov*>.

Ann Fowler, Attorney-Adviser, Brian Metz, Attorney-Adviser, Dean Adams, Assistant Chief Counsel, or Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or <*ann.fowler@bpd.treas.gov*>.

SUPPLEMENTARY INFORMATION: Beginning October 1, 1988, Treasury permitted paying agents to transmit and receive settlement for redeemed definitive savings bonds and savings notes through the EZ CLEAR system. The EZ CLEAR system required paying agents to manually sort and mail definitive savings bonds and savings notes to the appropriate Federal Reserve Bank or Branch. Treasury paid paying agents a 30-cent fee for each redeemed definitive savings bond or savings note presented through the EZ CLEAR system.

Effective April 11, 2012, paying agents will begin to transition the submission of redeemed definitive savings bonds and savings notes from the EZ CLEAR process to an existing image-based process through the Federal Reserve. This simple and modern process allows paying agents to electronically transmit images of redeemed definitive savings bonds and savings notes to a Federal Reserve Processing Site for payment. Because the new process removes the manual sorting and mailing required by the former process, Treasury is eliminating the fee that it paid to paying agents for submitting redeemed definitive savings bonds and notes. The elimination of paying agent fees will result in significant program savings.

This fee change is consistent with 31 CFR 321.23, which makes discretionary Treasury's payment of fees to paying agents for the processing of redeemed definitive savings bonds and savings notes. Therefore, notice is hereby given that, effective April 11, 2012, Treasury will no longer pay fees to paying agents for the redemption of definitive savings bonds and savings notes.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2012–7951 Filed 4–2–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of 4 Individuals and 2 Entities Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of four individuals and two entities whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designations by the Director of OFAC of the 4 individual(s) and 2 entit(ies) in this notice, pursuant to Executive Order 13224, are effective on March 27, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On March 27, 2012 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, four individuals and two entities whose property and interests in property are blocked pursuant to Executive Order 13224.

The listings for these individuals and entities on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individual(s)

1. AGHAJANI, Hosein (a.k.a. ADHAJANI, Azim; a.k.a. AGAJANY, Azimi; a.k.a. AGHAJANI, Azimi; a.k.a. AGHAJANI, Azim; a.k.a. AGHAJANI, Asim; a.k.a. AQAJANI, Azim); DOB 1967; nationality Iran (individual) [SDGT]
2. TABATABAEI, Sayyid Ali Akbar (a.k.a. TABATABAEE, Sayyed Ali; a.k.a. TABATABAEI, Ali Akbar; a.k.a. TABATABAEI, Syed; a.k.a. TABATABAEI, Seyed Akbar; a.k.a. TABATABA'I, Seyed Akbar; a.k.a. TABATABA'IE, Sayyed Ali; a.k.a. TAHMAESEBI, Seyed Akbar; a.k.a. TAHMASEBI, Seyed; a.k.a. TAHMASEBI, Akbar); nationality Iran; Passport 6620505; alt. Passport 9003213 (individual) [SDGT]
3. GHANI, Esmail (a.k.a. AKBARNEJAD, Esmaeil Ghaani; a.k.a. GHAANI, Esmail; a.k.a. GHA'ANI, Esma'il; a.k.a. NEZHAD, Ismail Akbar; a.k.a. QA'ANI, Esma'il; a.k.a. QANI, Esmail); DOB 8 Aug 1957; POB Mashhad, Iran; Passport D9003033 (Iran); alt. Passport D9008347 (Iran) issued 18 Jul 2010 expires 18 Jul 2015 (individual) [SDGT]
4. JEGA, Ali Abbas Usman (a.k.a. HASSAN, Ali Abbas Othman; a.k.a. JEGA, Abbas), 6B Nouakchott Street, Wuse Zone 1, Abuja, Nigeria; DOB 1965; nationality Nigeria (individual) [SDGT]

Entities

1. YAS AIR (a.k.a. YAS AIR KISH; a.k.a. YASAIR CARGO AIRLINE), Mehrabad International Airport, Next to Terminal No. 6, Tehran, Iran [SDGT]
2. BEHINEH TRADING, Tehran, Iran [SDGT]

Dated: March 27, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–7954 Filed 4–2–12; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

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Part II

Commodity Futures Trading Commission

17 CFR Parts 1, 3, and 23

Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, and 23

RIN 3038–AC96

Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting regulations to implement certain provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These regulations set forth reporting and recordkeeping requirements and daily trading records requirements for swap dealers (SDs) and major swap participants (MSPs). These regulations also set forth certain duties imposed upon SDs and MSPs registered with the Commission with regard to: Risk management procedures; monitoring of trading to prevent violations of applicable position limits; diligent supervision; business continuity and disaster recovery; disclosure and the ability of regulators to obtain general information; and antitrust considerations. In addition, these regulations establish conflicts-of-interest requirements for SDs, MSPs, futures commission merchants (FCMs), and introducing brokers (IBs) with regard to firewalls between research and trading and between clearing and trading. Finally, these regulations also require each FCM, SD, and MSP to designate a chief compliance officer, prescribe qualifications and duties of the chief compliance officer, and require that the chief compliance officer prepare, certify, and furnish to the Commission an annual report containing an assessment of the registrant's compliance activities.

DATES: The rules are effective June 4, 2012. Specific compliance dates are discussed in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Frank N. Fisanich, Chief Counsel, 202–418–5949, *ffisanich@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Ward P. Griffin, Counsel, 202–418–5425, *wgriffin@cftc.gov,* Office of the General Counsel, and Hannah Ropp, Economist, 202–418–5228, *hropp@cftc.gov,* Office of the Chief Economist, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

The Commission is hereby adopting § 23.200 through § 23.205 [1] setting forth reporting and recordkeeping requirements and daily trading records requirements for SDs and MSPs, as required under sections 4s(f) and 4s(g) of the Commodity Exchange Act (CEA); § 23.600 through § 23.607 setting forth certain duties imposed upon SDs and MSPs with regard to: (1) Risk management procedures; (2) monitoring of trading to prevent violations of applicable position limits; (3) diligent supervision; (4) business continuity and disaster recovery; (5) conflicts of interest policies and procedures; (6) disclosure and the ability of regulators to obtain general information; and (7) antitrust considerations, as required under section 4s(j) of the CEA; § 3.3 requiring FCMs, SDs, and MSPs to designate a chief compliance officer, prescribing qualifications and duties of the chief compliance officer, and requiring the chief compliance officer to prepare, certify, and furnish to the Commission an annual report containing an assessment of the registrant's compliance activities, as required under sections 4d(d) and 4s(k) of the CEA; and § 1.71 setting forth certain duties imposed on FCMs and IBs with regard to implementing conflicts of interest policies and procedures, as required under section 4d(c) of the CEA; as well as amendments to § 3.1 to add chief compliance officers to the definition of ''principal'' and to add a new definition of ''board of directors.''

II. Comments on the Notices of Proposed Rulemaking

The final rules adopted herein were proposed in five separate notices of proposed rulemaking.[2] Each proposed rulemaking was subject to an initial 60-day public comment period and a re-opened comment period of 30 days.[3] The Commission received a total of approximately 114 comment letters directed specifically at the proposed rules.[4] The Commission considered

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1.

[2] *See* 75 FR 76666 (Dec. 9, 2010) (Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants (Recordkeeping NPRM)); 75 FR 71397 (Nov. 23, 2010) (Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants (Duties NPRM)); 75 FR 70152 (Nov. 17, 2010) (Implementation of Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers (FCM/IB Conflicts NPRM)); 75 FR 71391 (Nov. 23, 2010) (Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants (SD/MSP Conflicts NPRM)); and 75 FR 70881 (Nov. 19, 2010) (Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant (CCO NPRM)).

[3] *See* 76 FR 25274 (May 4, 2011) (extending or re-opening comment periods for multiple Dodd-Frank proposed rulemakings).

[4] Comment files for each proposed rulemaking can be found on the Commission Web site, *www.cftc.gov.*

each of these comments in formulating the final regulations.[5]

The Chairman and Commissioners, as well as Commission staff, participated in numerous meetings with representatives of potential SDs and MSPs, existing FCMs, trade associations, public interest groups, traders, and other interested parties. In addition, the Commission has consulted with other U.S. financial regulators including: (i) The Securities and Exchange Commission (SEC); (ii) the Board of Governors of the Federal Reserve System; (iii) the Office of the Comptroller of the Currency; and (iv) the Federal Deposit Insurance Corporation. Staff from each of these agencies has had the opportunity to provide oral and/or written comments to this adopting release, and the final regulations incorporate elements of the comments provided. The Commission intends to work with the Federal Deposit Insurance Corporation (FDIC) to establish appropriate information-sharing arrangements to ensure that the FDIC has the information it needs to exercise authority under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act with regard to any SD or MSP registered with the Commission.

The Commission is mindful of the benefits of harmonizing its regulatory framework with that of its counterparts in foreign countries. The Commission has therefore monitored global advisory, legislative, and regulatory proposals, and has consulted with foreign regulators in developing the final regulations.

A. Regulatory Structure

The proposed regulations did not differentiate between SDs and MSPs that may be a division of a larger entity or institution, but not a separate legal entity. The proposed regulations also did not differentiate between SDs and MSPs, but, rather, applied identical rules to both types of entities. The proposals, however, solicited comments on whether certain provisions of the proposed regulations should be modified or adjusted to reflect the differences among SDs or MSPs. In addition, the proposed regulations tracked the scope of the statutory text, and did not, by their terms, apply only to the swap activities of SDs and MSPs.

In its comment letter, Cargill, Incorporated (Cargill) argued that the proposed rules should recognize Congressional intent to permit a business with a swap dealing division to be subject to SD regulation only for the activities of that division. Cargill recommended that the Commission make clear that the Commission's regulations only apply to the swap dealing business of an SD that is a division of a larger company, and not to the other business activities of the company.

MetLife, Inc. (MetLife), the Managed Funds Association (MFA), BlackRock, and the Asset Management Group of the Securities Industry and Financial Markets Association (AMG) each argued that the Dodd-Frank Act does not require that the Commission to apply the same rules to MSPs as those applied to SDs and that MSPs should not be subject to the same regulations as SDs because MSPs do not engage in market-making activities.

The Securities Industry and Financial Markets Association (SIFMA) and the Federal Home Loan Banks (FHLBs) each recommended that the Commission's regulations should allow registrants that are regulated by a prudential regulator to comply with the Commission's regulations on a substituted compliance basis by complying with comparable regulations of their prudential regulator.

In response to Cargill's comment, the Commission is including a new definition of ''swaps activities'' in the final regulations, as follows: ''*Swaps activities* means a registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives.''

The Commission is using this term in the final regulations to (i) limit the scope of the risk management requirements in § 23.600 to only the swap activities of SDs and MSPs; (ii) define the extent of the recordkeeping requirement in § 23.201; and (iii) limit the scope of the duties and responsibilities of the chief compliance officer of an SD or MSP in § 3.3 to the swaps activities of SDs and MSPs.[6]

The Commission is not modifying the regulations to differentiate between SDs and MSPs. The Commission observes that no provision of sections 4s(f), (g), (j), and (k) of the CEA, as added by the Dodd-Frank Act, differentiates between the duties and requirements of SDs and those of MSPs. The Commission thus has determined that the intent of sections 4s(f), (g), (j), and (k) is to apply the same requirements to MSPs and SDs, and the Commission is taking the same approach in the final regulations. The Commission believes that to the extent the final regulations are not applicable to an MSP's activities, the MSP is not burdened by being subject to the regulations.

The Commission has considered but rejected a substituted compliance regime with respect to the final rule for registrants subject to regulation by a prudential regulator. The Commission notes that section 4s(e) of the CEA grants prudential regulators exclusive authority to prescribe capital and margin requirements for SDs and MSPs that are banks, but does not extend such authority to any other part of section 4s. Because SDs and MSPs will be registrants of the Commission, the Commission has determined that its interest in ensuring that all registrants are subject to consistent regulation outweighs any burden that may be placed on registrants that are subject to regulation by a prudential regulator. However, the Commission observes that many of its final regulations are modeled on prudential regulations and supervision. Thus the two regimes would be broadly consistent.

B. Reporting, Recordkeeping, and Daily Trading Records Requirements for SDs and MSPs

As added by section 731 of the Dodd-Frank Act, sections 4s(f) and 4s(g) of the CEA established reporting and recordkeeping requirements and daily trading records requirements for SDs and MSPs.

Section 4s(f)(1) requires SDs and MSPs to ''make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant.'' In the Recordkeeping NPRM, the Commission proposed regulations, pursuant to sections 4s(f)(1)(B)(i) and (ii) of the CEA, prescribing the books and records requirements of ''all activities related to the business of swap dealers or major swap participants,'' regardless of whether or not the entity has a prudential regulator.

In addition, the Commission proposed regulations in the Recordkeeping NPRM pursuant to section 4s(g)(1) of the CEA, requiring that SDs and MSPs ''maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash and forward transactions) and recorded

[5] The Commission also reviewed the proposed rule of the Securities and Exchange Commission concerning business conduct standards for security-based swap dealers and major security-based swap participants. *See* 76 FR 42396 (July 18, 2011).

[6] In addition, the Commission anticipates that under its further definition of ''swap dealer,'' an SD that has applied for and received a limited purpose designation from the Commission will be subject to these regulations only for the categories or activities for which the limited purpose designation is granted.

communications, including electronic mail, instant messages, and recordings of telephone calls.'' The Commission notes that section 4s(g)(3) requires that daily trading records for each swap transaction be identifiable by counterparty, and section 4s(g)(4) specifies that SDs and MSPs maintain a ''complete audit trail for conducting comprehensive and accurate trade reconstructions.'' The Commission received 14 comment letters in response to the Recordkeeping NPRM and considered each in formulating the final rules.

C. General Records Requirement—§ 23.201

Proposed § 23.201 set forth the records that SDs and MSPs must maintain. The records required under the proposed rule included full and complete swap transaction information, including all documents on which swap information is originally recorded.

1. Additional Types of Records To Be Retained

In the Recordkeeping NPRM, the Commission requested comments regarding whether additional types of records other than those specified in the proposed rules should be required to be kept by SDs and MSPs. The Commission also requested comment regarding whether drafts of documents should be kept.

The Working Group of Commercial Energy Firms (The Working Group) commented that the current proposal is sufficient and any additional record retention requirements would be of little value to the Commission. Chris Barnard, however, recommended that drafts of documents should also be kept, arguing that the decision process leading up to a final document can be very informative. In order to regulate the use of high-frequency and algorithmic trading strategies, Better Markets, Inc. (Better Markets) recommended that the Commission require SDs and MSPs that employ high-frequency and algorithmic trading strategies to maintain records of each strategy employed including a description of the strategy and its objectives and the algorithms employed, and to maintain a record of every order, cancellation, and trade that occurs in the implementation of each strategy, indexed to the electronic record of the strategy description and properly time stamped.

Having considered these comments and the comments discussed below regarding specific recordkeeping requirements, the Commission has determined that the record retention requirements as proposed are sufficient and has not included any additional requirements in the final rules. With respect to Better Markets' comment, the Commission notes that pursuant to § 23.600(d)(9), as adopted in this release and discussed further below, SDs and MSPs are required to ensure that use of trading programs is subject to policies and procedures governing their use, supervision, maintenance, testing, and inspection, and that such policies and procedures are subject to a recordkeeping requirement pursuant to § 23.600(g).

2. Reliance on Records of Swap Data Repositories

The proposed regulations did not address whether an SD or MSP may rely on reporting a swap to a swap data repository (SDR) as a means of meeting their recordkeeping requirements. Proposed § 23.203(b)(2) required records of any swap to be kept for the life of the swap and for a period of five years following the termination, maturity, expiration, transfer, assignment, or novation date of the swap.

The International Swaps and Derivatives Association (ISDA) and SIFMA (together, ISDA & SIFMA) requested that the Commission clarify the extent to which SDs and MSPs may rely upon SDRs to retain records beyond the time periods that registrants currently retain such records. ISDA & SIFMA did not elaborate on the current retention periods for swaps records, nor did they explain how this approach would work in the absence of established SDRs for all types of swaps.

At this time, the Commission has determined not to permit SDs and MSPs to rely solely on SDRs to meet their recordkeeping obligations under the rules. The Commission believes that reliance on SDRs may be a cost-efficient alternative in the future, but such reliance would be premature at the present time. Additionally, the Commission believes that SDs and MSPs must maintain complete records of their swaps for the purposes of risk management. The data that is required to be reported to an SDR may not be sufficient for these purposes.

3. Transaction Records Maintained in a Form and Manner Identifiable and Searchable by Transaction and Counterparty—§§ 23.201(a)(1), 23.202(a), and 23.202(b)

Proposed § 23.201(a)(1) required SDs and MSPs to keep transaction records in a form identifiable and searchable by transaction and by counterparty. Proposed §§ 23.202(a) and 23.202(b) also required SDs and MSPs to keep daily trading records for each swap and any related cash or forward transaction as a separate electronic file identifiable and searchable by transaction and counterparty.

ISDA & SIFMA recommended that the decision whether to maintain each transaction record as a separate electronic file be left to the reporting counterparties. ISDA & SIFMA argued that SDs and MSPs routinely store data across a number of systems, and that aggregating transaction data from all systems into a single electronic file would require enormous investment across market participants and would require a substantial implementation period.

The Working Group argued that tying records of unfilled or cancelled orders, correspondence (e.g., voice records, email, and instant messages), journals, memoranda, and other records required by proposed § 23.201(a)(1) to each individual transaction in a manner that is identifiable and searchable by transaction would create an enormous technical burden, likely requiring the review, sorting, and assignment of such data to each transaction manually by individual employees. The Working Group recommended therefore that the Commission allow SDs and MSPs to maintain records of the required information in the form and manner currently employed by such firms, not in a single comprehensive file, if such records would be readily accessible and could be provided to the Commission within a reasonable amount of time following a request.

The Commission agrees with the comments, in part, and is modifying the proposed rules to remove the provision in § 23.202(a) and § 23.202(b) that requires each transaction record to be maintained as a separate electronic file. The Commission believes that this modification will make the requirement less burdensome for SDs and MSPs because it will allow such registrants to maintain searchable databases of the required records without the added cost and time needed to compile records into individual electronic files. The Commission notes that the rule, as modified, does not require the raw data in such databases to be tagged with transaction and counterparty identifiers so long as the SD or MSP can readily access and identify records pertaining to a transaction or counterparty by running a search on the raw data. In response to The Working Group's comments, the Commission confirms that swap records can be maintained under current market practice so long as the records are readily accessible, are identifiable and searchable by transaction and counterparty, and otherwise meet the

requirements of § 1.31, as required under § 23.203.

However, the Commission observes that section 4s(g)(3) of the CEA requires registrants to ''maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.'' In accordance with this statutory provision, the rules clarify that such trading records should be searchable by transaction and by counterparty. Maintaining records in this manner may prove costly for some SDs and MSPs, but this approach is required by statute and necessary for accurate audit trail construction, which is paramount for successful enforcement of trade practice cases.

4. Business Records—§ 23.201(b)

As proposed, § 23.201(b) required SDs and MSPs to keep full, complete, and systematic business records, including records related to corporate governance, financial records, complaints, and marketing and sales materials.

The Working Group acknowledged that market participants presently retain records that would qualify as business records under the proposal, although not in a single comprehensive file. The Working Group recommended that the Commission permit these records to be retained as they currently are in the normal course of business, as long as such records can be readily accessed and provided to the Commission upon request. For example, many entities retain financial records within their accounting departments, while marketing and sales materials would be retained separately within another division. The Working Group also recommended that the Commission clarify that when a subsidiary is determined to be an SD or MSP, but its parent company is not, business records should only be required to be retained for the subsidiary.

In response to The Working Group's comments, the Commission confirms that the rule does not require SDs and MSPs to keep the required business records in a single comprehensive file. So long as SDs and MSPs are keeping full, complete, and systematic business records that are available for inspection or disclosure, the requirements of § 23.201(b) would be met. The Commission also notes that the rule applies only to registered SDs and MSPs, and, therefore, the rules would not apply to the parent company of a registrant unless the parent company is also an SD or MSP.

5. Records of Complaints Received—§ 23.201(b)

Proposed § 23.201(b) required SDs and MSPs to retain a record of complaints received, certain identifying information about the complainant, and a record of the disposition of the complaint.

MFA commented that the requirement to retain a record of complaints is inappropriate for MSPs because, except in the event such entities are registered as commodity trading advisors or commodity pool operators: (a) Entities that may be classified as MSPs would not be members of NFA or similar organizations; and (b) the filing of such complaints against entities that may be classified as MSPs is neither customary nor consistent with such entities' activities in the market.

Having considered MFA's comment, the Commission is adopting the rule as proposed. MSPs are, by definition, market participants that have a substantial position in swaps, that have outstanding swaps that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. financial markets, or that are highly leveraged. Consequently, the Commission believes it is possible that a record of complaints, or a pattern of complaints, made against an MSP could be of regulatory value to the Commission. The Commission also notes that pursuant to the Commission's MSP registration rule, each MSP registered with the Commission is also required to be a member of at least one registered self-regulatory organization (SRO).[7]

6. Records of Marketing and Sales Materials—§ 23.201(b)(4)

Proposed § 23.201(b)(4) required SDs and MSPs to retain copies of all marketing and sales presentations, advertisements, literature, and communications, and a record of the SD's or MSP's compliance with applicable Federal requirements, Commission regulations, and the rules of any SRO related to marketing and sales materials.

MFA commented that because MSPs are not market makers, they do not produce such materials for public dissemination. Therefore, MFA felt that the concerns about SD marketing and sales materials that necessitate the SDs' recordkeeping requirement are inapplicable to MSPs.

The Commission has decided not to remove MSPs from the relevant provisions of the rule because MSPs would need to comply with the recordkeeping requirement only to the extent that they produce such materials. To the extent that an MSP does not produce marketing or sales materials, the requirements of the rule would be inapplicable.

7. Records of Date and Time of Reports To Swap Data Repositories and Data Reported in Real-Time—§ 23.201(c) and § 23.201(d)

Proposed § 23.201(c) required SDs and MSPs to retain a record of the date and time the SD or MSP reported data or information to SDRs under proposed Part 45. Proposed § 23.201(d) required SDs and MSPs to retain a record of the date and time the SD or MSP reported information for purposes of real-time public reporting under proposed Part 43.

With regard to such records, The Working Group requested that the Commission clarify that the record of the date and time of reports to SDRs and for real-time public reporting be to the minute, and not to the second.

The proposed rule did not specify the form of the depiction of time in records of reports made under parts 43 or 45, other than to say that the record must include the ''date and time.'' The Commission confirms that SDs and MSPs may record time for the purpose of § 23.201 in their discretion, so long as they comply with any independent requirements under Parts 43 and 45.

8. Records of a ''Rationale'' for Certain Swap Determinations—§ 23.201(d)(2) & (3)

Proposed § 23.201(d)(2) and (3) required SDs and MSPs to retain a record of the rationale for reporting a less specific data field than is required under the proposed real-time public reporting requirements in part 43, and a record of the rationale for determining that a swap is a large notional swap as required under proposed part 43.

The Working Group requested clarification as to what the Commission is seeking with respect to a ''rationale'' for these scenarios. The Working Group questions what purpose this information would serve, or what benefit the Commission hopes to derive for purposes of carrying out its duties under the CEA.

[7] *See* 17 CFR 170.16 Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012) (stating ''Each person registered as a swap dealer or a major swap participant must become and remain a member of at least one futures association that is registered under section 17 of the Act and that provides for the membership therein of such swap dealer or major swap participant, as the case may be, unless no such futures association is so registered.''), available at *www.cftc.gov.*

The Commission has determined that any substantive recordkeeping requirements necessary for compliance with Part 43 will be taken up in that part and thus has deleted the proposed ''rationale'' requirements from § 23.201.

D. Daily Trading Records—§ 23.202

Section 4s(g)(1) of the CEA requires that SDs and MSPs maintain daily trading records of their swaps and ''all related records (including related cash and forward transactions).'' Section 4s(g)(1) also requires that SDs and MSPs maintain recorded communications, including electronic mail, instant messages, and recordings of telephone calls. Section 4s(g)(2) provides that the daily trading records shall include such information as the Commission shall require by rule or regulation. Proposed § 23.202 prescribed daily trading record requirements, which would include trade information related to pre-execution, execution, and post-execution data.

1. Records of Pre-Execution Trade Information—§ 23.202(a)(1)

Proposed § 23.202(a)(1) required SDs and MSPs to make and keep records of pre-execution trade information, including records of all oral and written communications concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a swap, however communicated.

The Air Transport Association of America, Inc. (ATA) commented that the current telephone recording systems in use by SDs and MSPs may not meet all of the proposed rule's requirements, and that implementing telephone recording systems that are compliant with the requirements would impose a significant additional cost. The ATA's members recognized that there may be benefits from the recording requirement, but they are uncertain that those benefits outweigh the costs of purchasing new, or upgrading existing, telephone phone recording and retrieval systems. The ATA is concerned that the cost of complying with all of the various rules proposed by the Commission will erect unnecessarily high barriers to entry for SDs, foreclosing all but the largest firms from acting as SDs.

MFA commented that it would be inappropriate to impose on MSPs the additional burden of maintaining a record of all oral communications made or received because the SDs with which MSPs enter into swaps would record such information. For the same reasons, MFA commented that the Commission should not require MSPs to create records of the date and time of quotations received or the date and time of execution of each swap and each related cash or forward transaction.

The Working Group argued that even if technology exists to record the required data in a format searchable by transaction and counterparty, it would not be possible to identify pre-execution data specified by the Commission as being applicable to a specific trade because traders and other commercial employees typically engage in ongoing dialogue with counterparties over an extended period of time and do not initiate communications specific to a single trade. The Working Group commented that it would be extremely difficult and time consuming to review manually each communication by a specific trader to determine which conversations or documents ultimately led to the execution of a particular swap and then assign that communication to a unified file.

ISDA & SIFMA asserted that where pre-execution records are maintained today they are captured prior to the execution of a swap and as such they are not linked to a trade. ISDA & SIFMA argued that while it may be possible potentially to search by counterparty with some investment in additional technology, it would not be possible to search by transaction because the infrastructure to link to a transaction is not in place today and the procedural and technical feasibility to do so has not been contemplated nor evaluated. ISDA & SIFMA strongly recommended that the Commission limit the rule to a description of data required as part of a trading record without dictating how such data should be stored and, in particular, that the Commission exclude oral communications from the electronic searchability requirement.

Having considered these comments, the Commission is modifying the proposed rule to remove the requirement that each transaction record be maintained as a separate electronic file, which should be less burdensome for SDs and MSPs because it will allow these registrants to maintain searchable databases of the required records without the added cost and time needed to compile the required records into individual electronic files. The Commission notes that section 4s(g)(3) of the CEA requires registrants to ''maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.'' The rule as adopted clarifies that such counterparty records must be searchable by transaction and by counterparty. Maintaining records in this form may prove costly for some registrants, but such form is mandated by the CEA.

However, in light of commenters' concerns, the Commission is adopting § 23.206, which delegates to the Director of the Division of Swap Dealer and Intermediary Oversight the authority to establish an alternative compliance schedule for requirements of § 23.202 that are found to be technologically and economically impracticable for an SD or MSP affected by § 23.202. The purpose of § 23.206 is to facilitate the ability of the Commission to provide a technologically practicable compliance schedule for affected SDs or MSPs that seek to comply in good faith with the requirements of § 23.202.

In order to obtain relief under § 23.206, an affected SD or MSP must submit a request for relief to the Director of the Division of Swap Dealer and Intermediary Oversight. SDs and MSPs submitting requests for relief must specify the basis in fact supporting their claims that compliance with § 23.202 would be technologically or economically impracticable. Such a request may include a recitation of the specific costs and technical obstacles particular to the entity seeking relief and the efforts the entity intends to make in order to ensure compliance according to an alternative compliance schedule. Relief granted under § 23.206 shall not cause a registrant to be out of compliance or deemed in violation of any registration requirements.

Such requests for an alternative compliance schedule shall be acted upon by the Director of the Division of Swap Dealer and Intermediary Oversight or designees thereto within 30 days from the time such a request is received. If not acted upon within the 30 day period, such request will be deemed approved.

The Commission notes that some commenters to a proposed Commission rulemaking to amend § 1.35,[8] which would require voice recording for futures and swap trading by FCMs and other registrants, raised questions about statements made in the preamble of the Recordkeeping NPRM. In that preamble, the Commission stated that proposed § 23.202 ''would not establish an affirmative new requirement to create recordings of all telephone conversations if the complete audit trail requirement can be met through other means, such as electronic messaging or trading.''[9] For avoidance of doubt, the Commission notes that the rule requires

[8] *See* Comments to Adaptation of Commission Regulations to Accommodate Swaps, 76 FR 33066, 33088–89 (June 7, 2011), available on the Commission's Web site: *www.cftc.gov*.

[9] *See* Recordkeeping NPRM, 75 FR at 76668.

a record of ''all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a swap.'' Thus, to the extent this pre-execution trade information does *not* include information communicated by telephone, the Commission confirms that an SD or MSP is under no obligation to create recordings of its telephone conversations. If, however, any of this pre-execution trade information is communicated by telephone, the SD or MSP must record such communications.

With respect to MFA's comments, section 4s(g)(4) of the CEA applies to both SDs and MSPs. Consequently, the audit trail requirements of the proposed rules apply equally to both SDs and MSPs because it is necessary that all Commission registrants have complete and accurate daily trading records. Moreover, the Commission notes that MFA did not provide any factual support for its assertion that every swap entered by an MSP would have an SD as the counterparty.

2. Records of Source and Time of Quotations—§ 23.202(a)(1)(ii)

Proposed § 23.202(a)(1)(ii) required SDs and MSPs to make and keep a record of the date and time, using Coordinated Universal Time (UTC), by timestamp or other timing device, for each quotation provided to, or received from, a counterparty prior to execution of a swap.

The Working Group argued that the Commission should not require a timestamp for every quote given or received, as the timestamp is unnecessary, overly burdensome, and would not assist in trade reconstruction. Further, The Working Group argued that most entities do not currently capture or store this information, that it would be difficult to do so, particularly given that quotations may be developed by multiple sources, and retention of the time of quotations will add additional compliance costs on market participants. The Working Group also requested clarification as to the meaning of ''reliable timing data for the initiation'' of a transaction.

MFA commented that the Commission should not require MSPs to create records of the date and time of quotations received or the date and time of execution of each swap and each related cash or forward transaction. MFA argued that since SDs should keep such records in connection with their market-making activities, to require an MSP customer to maintain the same records would be duplicative and a significant and unnecessary burden on MSPs.

Having considered these comments, the Commission is adopting the rule as proposed. As noted above, the Commission observes that section 4s(g)(4) of the CEA requires both SDs and MSPs to maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions. The Commission therefore believes that the audit trail requirements of the rule should apply to both SDs and MSPs because it is necessary that all Commission registrants have complete and accurate daily trading records. As explained above, no support has been offered for MFA's assertion that an SD will be the counterparty to every swap executed with an MSP. Additionally, a comprehensive and accurate trade reconstruction necessarily entails a reconstruction of the sequence of events leading up to a trade and that this sequence cannot be reconstructed accurately without reliable timing information. It is noteworthy that commenters were unable to provide any alternative to the timestamp requirement. Therefore, the Commission is retaining the timestamp requirement in the final rule.

With respect to The Working Group's concern regarding the ''reliable timing data'' requirement, the Commission confirms that the form of ''reliable timing data'' could be a timestamp, but the exact form is left to the discretion of the registrant.

3. Timestamp for Quotations Using Universal Coordinated Time (UTC)—§ 23.202(a)(1)(ii)

The proposed regulation required SDs and MSPs to record the time of each quotation provided to or received from a counterparty prior to execution using Universal Coordinated Time.

ISDA & SIFMA commented that the value derived by moving the industry to UTC appears minimal when compared to the costs involved. ISDA & SIFMA provided the Commission with no quantitative data regarding these purported additional costs.

Having considered ISDA & SIFMA's comment, the Commission is adopting the rule as proposed. The use of UTC in the rule reflects a consistent approach taken by the Commission in this rule and the Commission's final rules for real-time public reporting [10] and the swap data reporting rule.[11] By requiring the use of UTC in § 23.202, the Commission is ensuring that the requirements of Part 23, Part 43, and Part 45 remain consistent to the extent possible.

4. Records of Time of Execution—§ 23.202(a)(2)(iv)

Proposed § 23.202(a)(2)(iv) required SDs and MSPs to record the date and time of execution of each swap to the nearest minute.

The Working Group argued that the proposed rule conflicts with both the proposed real-time reporting rule and proposed swap data recordkeeping and reporting rule, which required that the time of execution be displayed to the second, rather than minute. The Working Group requested that the Commission be consistent in all of the its recordkeeping and reporting rules, and further requested that the Commission adopt a minute requirement, rather than displaying to the second.

The Commission is adopting the rule as proposed. The Commission notes that the ''nearest minute'' standard is the standard for futures orders under existing § 1.35. The Commission also notes that the final swap data recordkeeping and reporting rule does not require the time of execution be displayed to the second.[12] While the proposed real-time reporting rule would require a registrant to record the time of execution to the second in some instances, the Commission believes recordkeeping to the nearest minute is sufficient for purposes of maintaining daily trading records and is consistent with § 1.35.

5. Records of Reconciliation Processes—§ 23.202(a)(3)(iii)

Proposed § 23.202(a)(3)(iii) required SDs and MSPs to keep records of portfolio reconciliation results, categorized by transaction and counterparty.

ISDA & SIFMA commented that maintaining records of reconciliation processes by transaction and counterparty may be particularly problematic because this data is not required to be captured in other markets, such as securities or bond markets, and significant additional infrastructure development would thus be required before this data could be captured and stored. ISDA & SIFMA recommended an ongoing dialogue between the Commission and the industry to understand the requirements for systems needed to meet the

[10] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1251 (Jan. 9, 2012).

[11] *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2212 (Jan. 13, 2012).

[12] *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2212, 2215 (Jan. 13, 2012).

requirements of the proposed rule, in particular the degree to which retained data will need to be identifiable and searchable.

The records of portfolio reconciliation results required under the rule are the minimum needed to monitor an SD's or MSP's compliance with the Commission's proposed § 23.502 on portfolio reconciliation.[13] Thus, the Commission is adopting the rule as proposed.

6. Daily Trading Records for Cash and Forward Transactions Related to a Swap—§ 23.202(b)

Proposed § 23.202(b) required SDs and MSPs to keep daily trading records, similar to those SDs and MSPs are required to keep for swaps, for related cash and forward transactions, defined under proposed § 23.200 as ''a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a swap where the swap and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another.''

The Working Group urged the Commission to recognize that, although participants in physical energy commodity markets use swaps and futures to hedge underlying physical positions, they do not, as a general matter, execute such transactions specifically for the purpose of hedging a specified underlying physical position. Rather, according to The Working Group, the predominant practice in physical energy markets is to hedge underlying physical positions on a portfolio or aggregate basis. Given the wide use of portfolio hedging in energy markets, The Working Group believes it would be difficult for energy market participants to link physical positions with arguably ''related'' swap transactions. The Working Group believes that compliance with proposed § 23.202(b) would impose a large number of very expensive and burdensome requirements on millions of physical transactions that are undertaken by commercial energy firms that are also parties to swap transactions.

ISDA & SIFMA commented that hedging and risk mitigation activities referred to in the proposed daily trading records rule are typically not executed with respect to specific trades; rather they are executed against the overall positions of business units such as trading desks and that it would not be possible to link cash and forward transactions to a specific swap. ISDA & SIFMA also commented that the reference to ''hedge'' also requires clarity to know the extent to which it comports with existing definitions in the CEA.

Having considered these comments, the Commission is adopting the rule as proposed. The Commission notes that section 4s(g)(1) of the CEA requires registrants to ''maintain daily trading records of their swaps * * * and related records (including related cash and forward transactions) * * *.'' Rule § 23.200 defines ''related cash and forward transactions'' as ''a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a swap where the swap and the related cash and forward transaction are used to hedge, mitigate the risk of, or offset one another.'' The Commission observes that the definition requires that a ''related cash and forward transaction'' be related to at least one swap, but does not prohibit such transaction from being related to more than one swap, or a swap from being related to more than one related cash or forward transaction. Therefore, the Commission believes the commenters' concerns that compliance with the rule is not possible in the context of portfolio hedging is misplaced. In addition, in response to the comments received, the Commission confirms that this definition is used solely for purposes of SD and MSP recordkeeping and is not intended to define hedging transactions for any other purpose or any other Commission regulation.

E. Records; Retention and Inspection—§ 23.203

1. Swap and Related Cash or Forward Record Retention Period—§ 23.203(b)(2)

Proposed § 23.203(b)(2) required SDs and MSPs to retain records of any swap or related cash or forward transaction until the termination or maturity of the transaction and for a period of five years after such date.

MFA commented that the vast majority of its members do not currently keep records of transactions for five years following the termination, expiration, or maturity of the transactions and compliance with this rule would be burdensome and costly. MFA recommended that the Commission not impose this record retention requirement on MSPs.

The Working Group argued that the long-term electronic storage of significant amounts of pre-execution communications will prove costly over the proposed five-year period. The Working Group recommended that the Commission re-evaluate whether all records subject to the proposed rule's retention requirements require a five year retention period.

ISDA & SIFMA recommended that further analysis and consultation be performed on the costs and benefits of holding records of all oral and written communications that lead to execution of a swap for the life of a swap plus five years. ISDA & SIFMA commented that they would be supportive of a voice recording obligation aligned to the rules of the UK Financial Services Authority, which are to retain recordings for a minimum period of six months.

By contrast, Chris Barnard recommended that records should be required to be kept indefinitely rather than the general five years under the proposal.

Having considered these comments, the Commission notes that proposed revisions to Commission regulation § 1.31 require retention of swap transaction records for a period of five years following the termination, expiration, or maturity of a swap,[14] and that § 23.203 is consistent with retention requirements under the final swap data reporting rule.[15] However, in response to commenters' concerns regarding retention of pre-execution trade information, the Commission is revising the rule to require that voice recordings need be kept for only one year. The Commission believes that the one-year retention period for voice recordings will enable the Commission to execute its enforcement responsibilities under the CEA adequately while minimizing the costs imposed on SDs and MSPs.

2. ''Readily Accessible''—§ 23.203(b)(1) and (b)(2)

The proposed regulation required SDs and MSPs to have both general records and swaps and related cash or forward transaction records readily accessible for the first two years of the applicable retention period.

The Working Group recommended that the Commission clarify whether the requirement that retained records be ''readily accessible'' means readily accessible by the registrant or by the Commission.

In response, the Commission observes that the term ''readily accessible'' has been the operative standard in § 1.31 of the Commission's regulations for several years. Specifically, § 1.31 requires that

[13] *See* Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 FR 81519, 81531 (Dec. 28, 2010).

[14] *See* Adaptation of Commission Regulations to Accommodate Swaps, 76 FR 33066, 33088 (June 7, 2011).

[15] *See* 17 CFR 45.2, Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2198 (Jan. 13, 2012).

''[a]ll books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period.'' In response to The Working Group's request for clarification, the Commission expects a registrant to be able to access such records promptly, and such records ''shall be open to inspection by any representative of the Commission or the United States Department of Justice.'' [16]

3. Records To Be Retained in Accordance With Commission Regulation 1.31—§ 23.203(b)

Proposed § 23.203(b) required SDs and MSPs to maintain records in accordance with existing § 1.31.

The Working Group commented that § 1.31 appears to apply to written documents, including electronic images of such documents, and does not seem suitable for electronic records such as those in a trading system, that do not originate from a written document. To be made workable for purposes of complying with the Commission's proposed requirements, The Working Group recommended that § 1.31 be revised to reflect current technologies and industry practices relating to digitized data storage.

The Commission has considered The Working Group's comment, but is adopting the rule as proposed. The Commission believes that The Working Group's concerns about § 1.31 have been addressed by a subsequent rule proposal to amend § 1.31 to reflect current technologies and industry practices related to digitized data storage.[17] If these amendments are finalized, the Commission believes that § 1.31 will be compatible with electronic records in a trading system and other records that do not originate from a written document.

F. Duties of SDs and MSPs

As part of an overall business conduct regime for SDs and MSPs, section 4s(j) of the CEA, as added by section 731 of the Dodd-Frank Act, sets forth certain duties for SDs and MSPs, including the duty to: (1) Monitor trading to prevent violations of applicable position limits; (2) establish risk management procedures adequate for managing the day-to-day business of the SD or MSP; (3) disclose to the Commission and to applicable prudential regulators [18] general information relating to swaps trading, practices, and financial integrity; (4) establish and enforce internal systems and procedures to obtain information needed to perform all of the duties prescribed by Commission regulations; (5) implement conflict-of-interest systems and procedures; and (6) refrain from taking any action that would result in an unreasonable restraint of trade or impose a material anticompetitive burden on trading or clearing. In its Duties NPRM, the Commission proposed six regulations to implement section 4s(j), specifically addressing risk management, monitoring of positions limits, diligent supervision, business continuity and disaster recovery, the availability of general information, and antitrust considerations. The Commission's proposed conflicts of interest policies and procedures were the subject of the separate SD/MSP Conflicts NPRM and are discussed below. The Commission received 20 comment letters in response to the Duties NPRM and considered each in formulating the final rules.

G. Risk Management Program for SDs and MSPs—§ 23.600

The Commission proposed § 23.600, which required SDs and MSPs to establish and maintain a risk management program reasonably designed to monitor and manage the risks associated with their business as an SD or MSP. Proposed § 23.600 specifically required the risk management program established by SDs and MSPs to consist of written policies and procedures; to have its risk management policies and procedures approved by the governing body of the SD or MSP; and to establish a risk management unit independent from the business trading unit to administer the risk management program.

1. Definitions—§ 23.600(a)

The Commission proposed definitions of ''affiliate,'' ''business trading unit,'' ''clearing unit,'' ''governing body,'' ''prudential regulator,'' and ''senior management.'' [19] The definitions set forth in § 23.600(a) will apply only to provisions contained in § 23.600. The Commission is adopting the definitions largely as proposed, with the exceptions discussed below.

a. Business Trading Unit—§ 23.600(a)(2)

SIFMA recommended that (i) the Commission modify the definition of ''business trading unit'' to delete the phrase ''or is involved in'' and replace it with ''directly engaged in'' to avoid inclusion of risk management, legal, credit, and operations personnel, all of whom could be deemed to be ''involved in'' business trading unit activities; and (ii) the Commission clarify that independent financial control functions that perform price verification for internal purposes (as opposed to providing prices to clients) are excluded from the business trading unit.

The Commission did not intend to include risk management, legal, credit, and operations personnel in the definition and has revised the definition to exclude such personnel. However, the Commission does not believe that only those personnel ''directly engaged in'' pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities sufficiently captures those personnel intended to be included by the definition for purposes of the rule. Thus, the Commission is modifying the proposed definition to exclude risk management, legal, credit, and operations personnel, but also to include specifically personnel exercising direct supervisory authority over the performance of business trading unit functions. Per SIFMA's recommendation, the Commission also has modified the definition to exclude price verification for risk management purposes from the list of business trading unit functions. The Commission believes that the definition as revised will be less burdensome for registrants, but retains the original intent of the definition.

b. Governing Body and Senior Management—§ 23.600(a)(3) and (4)

Cargill recommended that the Commission expand the definitions of governing body and senior management to include the governing body or senior management of the division of a larger company. Cargill, SIFMA, and MetLife also recommended that the Commission permit a management committee or board committee to serve the function of a governing body. SIFMA further requested that the Commission confirm that governing body and senior management approvals required under the proposed rules may occur at the holding company level.

[16] Regulation 1.31 further provides that ''[a]ll such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.''

[17] *See* Adaptation of Commission Regulations to Accommodate Swaps, 76 FR 33066, 33088 (June 7, 2011).

[18] This term is defined for the purposes of this rulemaking and has the same meaning as section 1(a)(39) of the CEA, which includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency.

[19] No comments were received on the proposed § 23.600(a) definitions of ''affiliate,'' ''clearing unit,'' or ''prudential regulator.'' With the exception of one change to the definition of ''prudential regulator'', the Commission has decided to adopt those definitions as proposed.

SIFMA recommended that the Commission not limit the definition of ''senior management'' to direct reports of the chief executive officer, but include any other officer having supervisory or management responsibility (including at the consolidated group level) for any organizational unit, department or division. BG Americas & Global LNG (BGA) argued that the requirement that the risk management unit report directly to a senior officer that reports directly to the CEO is too rigid and does not reflect the reality of most energy trading companies.

In response to commenters, the Commission is modifying the proposed definition of ''governing body'' to allow an SD or MSP to designate as its governing body ''(1) a board of directors; (2) a body performing a function similar to a board of directors; (3) any committee of a board or body; or (4) the chief executive officer of a registrant, or any such board, body, committee or officer of a division of a registrant, provided that the registrant's swaps activities for which registration with the Commission is required are wholly contained in a separately identifiable division.'' The Commission believes that under this definition the governing body of an SD or MSP could include a board committee or the governing body or senior management of a division, provided that the swaps activities of an SD or MSP are wholly contained in a separately identifiable division.

Likewise, in response to commenters, the Commission is modifying the proposed definition of ''senior management'' to provide increased flexibility in registrant governance structures. The Commission is revising the proposed definition to require only that senior management consist of officers of the SD or MSP that have been ''specifically granted the authority and responsibility by the registrant's governing body to fulfill the requirements of senior management.''

The Commission believes that the increased flexibility permitted by the revised definitions of ''governing body'' and ''senior management'' will be less burdensome for SDs and MSPs, but retains the Commission's intent to have accountability at the highest level of management.

2. Scope of Risk Management Program—§ 23.600(b)

The proposed regulations required SDs and MSPs to establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the business of the SD or MSP and the Risk Management Program to take into account risks posed by affiliates and take an integrated approach to risk management at the consolidated entity level.

The Working Group, MetLife, and the Office of the Comptroller of the Currency argued that § 23.600 should be limited to the risks associated with swaps activities, and not other business lines in which the SD or MSP may engage. The Working Group also recommended that the rule be revised to require the risk management program to take into account only swaps-related risks posed by affiliates and take an integrated approach to risk management at the consolidated entity level to the extent the SD or MSP deems necessary to enable effective risk and compliance oversight.

Based on these comments, the Commission has determined that the risk management rules will be limited in scope to apply only to the swaps activities of SDs and MSPs and is modifying proposed § 23.600(b)(1) as recommended by The Working Group.

On the other hand, the Commission has rejected The Working Group's recommendation that SDs and MSPs consider only swaps-related risks posed by affiliates. The Commission believes that an SD or MSP should be aware of all risks posed by affiliates, and the rule should require the SD's or MSP's Risk Management Program to be integrated into overall risk management considerations at the consolidated entity level. However, the Commission is modifying proposed § 23.600(c)(1)(ii) to reflect the fact that Risk Management Programs within an SD or MSP may not have the authority to direct other divisions of a larger company.

Further, the Commission recognizes that some SDs and MSPs will be part of a larger holding company structure that may include affiliates that are engaged in a wide array of business activities. The Commission understands with respect to these entities, that in some instances, the top level company in the holding company structure is in the best position to evaluate the risks that an affiliate of an SD or MSP may pose to the enterprise, as it has the benefit of an organization-wide view and because an affiliate's business may be wholly unrelated to swaps activities. Therefore, to the extent an SD or MSP is part of a holding company with an integrated risk management program, the SD or MSP may address affiliate risks and comply with § 23.600(c)(1)(ii) through its participation in a consolidated entity risk management program.

3. Flexibility To Design Risk Management Program—§ 23.600(b)

The proposed regulation required a registrant's risk management program to include certain enumerated elements: identification of risks and risk tolerance limits; periodic risk exposure reports; a new product policy; policies and procedures to monitor and manage market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, and settlement risk; use of central counterparties; compliance with margin and capital requirements; and monitoring of compliance with risk management program.

The Working Group and the Edison Electric Institute (EEI) commented that proposed § 23.600 requires a level of detail in the Risk Management Program not provided for in the Dodd-Frank Act, and recommended that the final rules be flexible enough to allow firms to adapt their existing compliance and risk management measures, and not cause firms to add entirely new compliance or risk management infrastructure.

Having considered these comments, the Commission is adopting the rule substantially as proposed. The Commission believes that the requirements of the rules represent prudent risk management practices, but do not prescribe rigid organizational structures. The Commission also believes the ''policies and procedures'' approach provides an adequate amount of flexibility that will allow registrants to rely upon any existing compliance or risk management capabilities to meet the requirements of the proposed rules. The Commission further believes that nothing would prevent firms from relying upon existing compliance and risk management programs to a significant degree.

4. Risk Management Policies and Procedures—§ 23.600(b)(2)

Proposed § 23.600(b)(2) required that a registrant's risk management program be described in written policies and procedures, that such policies and procedures be approved in writing by the registrant's governing body, and that such policies and procedures be provided to the Commission upon registration and following any material change.

SIFMA recommended that the Commission clarify that written risk management policies and procedures need not be documented in a single, consolidated set, so long as such policies and procedures address all of the elements of the risk management program required by the proposed rules. Cargill commented that registrants

should not be required to furnish risk management policies and procedures to the Commission, as such policies and reports can be obtained by the Commission by special call or reviewed during examinations. By way of contrast, Chris Barnard recommended that the Commission expand the reporting requirement to include public disclosure to allow for market participants to assess a registrant's approach to risk management and increase confidence in the swap markets.

In response to SIFMA's and Cargill's comments, the Commission is modifying the proposed rule to provide that an SD's or MSP's written policies and procedures must be provided upon application for registration to the Commission, or to a futures association registered under section 17 of the CEA, if directed by the Commission, but thereafter only upon request of the Commission. Additionally, the Commission confirms that, so long as the required policies and procedures are maintained in a reasonably useable and accessible fashion, the rule is not intended to mandate the form or manner of documentation or retention.

With respect to Mr. Barnard's recommendation, the Commission is not adopting a public disclosure requirement because registrants' risk management policies and procedures may contain sensitive or proprietary information.

5. Risk Management Unit—§ 23.600(b)(5)

Proposed § 23.600(b)(5) required SDs and MSPs to establish a risk management unit that reports directly to senior management, that is independent from the business trading unit, and that has sufficient authority and resources to carry out the risk management program required by the proposed regulations.

SIFMA recommended that the Commission clarify that different risk management processes may be managed by independent control functions, organized by relevant discipline or specialization, and that such functions, so long as they comply with the independence and other requirements applicable to the risk management unit, need not be part of a single risk management unit. To facilitate a functional working relationship, The Working Group recommended that the Commission clarify that separation of the risk management unit and business trading unit requires only separate and independent oversight of business unit and risk management unit personnel, but not actual physical separation of such personnel.

BGA recommends that the Commission allow the risk and trading units to report to a shared senior officer, as long as the senior officer does not participate in directing, organizing, or executing trades. According to BGA, this would be consistent with the Federal Energy Regulatory Commission's requirement for achieving independence between franchised public utilities and their market-regulated power sales affiliates, and would achieve the appropriate level of independence without requiring companies to overhaul their existing management structures.

Better Markets commented that simply requiring Risk Management Unit independence is inadequate and recommends that the Commission ensure independence with rules similar to those proposed to ensure independence of research analysts in proposed § 23.605, while Cargill requested that the Commission provide greater flexibility in how SDs arrange monitoring and compliance of their risk management program, rather than rigidly requiring complete independence from the business trading unit.

Having considered these comments, the Commission is adopting the rule as proposed. While § 23.600(b)(5) does not require a registrant's risk management unit to be a formal division in the registrant's organizational structure, the Commission expects that an SD or MSP will be able to identify all personnel responsible for required risk management activities as its ''risk management unit'' even if such personnel fulfill other functions in addition to their risk management activities. In addition, § 23.600(b)(5) permits SDs and MSPs to establish dual reporting lines for risk management personnel performing functions in addition to their risk management duties, but the rule would not permit a member of the risk management unit to report to any officer in the business trading unit for any non-risk management activity. The Commission believes that such dual reporting invites conflicts of interest and would violate the rule's risk management unit independence requirement.

As requested by The Working Group, the Commission confirms that independence of the risk management unit from the business trading unit does not require physical separation.

The Commission notes that per the revised definition of ''senior management'' discussed above, the risk management unit will not be required to report to an officer that reports directly to the CEO, but to ensure the independence of the risk management unit, the rule would not permit the risk management unit and business trading unit to report to a shared senior officer. The Commission also believes, however, that reporting line independence is sufficient to ensure accountability for the independence of the risk management unit, and, therefore, is not requiring firewalls of the type required in § 23.605 to ensure research analysts are free from conflicts of interest, as proposed by the Better Markets comment.

6. Risk Measurement Frequency—§ 23.600(c)(4)

Proposed § 23.600(c)(4) required registrants to measure their market, credit, liquidity, and foreign currency risk daily.

MetLife commented that the daily risk measuring required by the proposed rule may be excessive for some MSPs, may require substantial information technology and human capital investments, and recommended that the frequency of risk measuring should be determined by an MSP's risk management unit and governing body, rather than be mandated by the Commission.

The Commission is adopting the rule as proposed. MSPs are, by definition, market participants that have a substantial position in swaps, and have outstanding swaps that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. financial markets, or are highly leveraged. Therefore, the Commission believes that it is entirely appropriate to require such market participants to measure their market, credit, liquidity, and foreign currency risk at least daily.

7. Approval of Exceptions to Risk Tolerance Limits—§ 23.600(c)(1)(i)

Proposed § 23.600(c)(1)(i) required that risk tolerance limits be approved by an SD's or MSP's senior management and governing body and that exceptions to such limits be approved, at a minimum, by a supervisor in the risk management unit.

SIFMA recommended that, subject to aggregate risk limits established for the relevant trading supervisor's authority, trading supervisors, rather than risk management personnel, should have the authority to approve risk tolerance limit exceptions. SIFMA argued that the required quarterly risk exposure reports provided to a registrant's senior management and governing body are an adequate check on decision-making by trading supervisors.

In response to SIFMA's comments, the Commission is revising proposed § 23.600(c)(1)(i) to remove the provision that requires risk management personnel to approve exceptions to risk tolerance limits. Instead, the Commission has determined that exceptions, along with the risk tolerance limits, must be subject to written policies and procedures. With this change, SDs and MSPs are free to grant discretion to trading supervisors to approve risk tolerance limit exceptions within the overall risk tolerance limits approved by the registrant's senior management and governing body.

8. New Product Policy—§ 23.600(c)(3)

Proposed § 23.600(c)(3) required SDs and MSPs to include a new product policy in their risk management programs. The proposed regulations required that such policies include an assessment of the risks of any new product prior to engaging in transactions and specifically required an assessment of potential counterparties; the product's economic function; pricing methodologies; legal and regulatory issues; market, credit, liquidity, foreign currency, operational, and settlement risks; product risk characteristics; and whether the product would alter the overall risk profile of the registrant.

The Working Group recommended that the regulations require only that (i) before an SD or MSP offers a new product, it must conduct due diligence that is commensurate with the risks associated with such product, and (ii) the decision to offer the product be approved by appropriate risk management and business unit personnel. In addition, the Working Group suggested that the Commission provide that the determination as to whether a product is ''new'' should be left to the SD or MSP.

SIFMA recommended that (i) the Commission clarify that a registrant may structure its new product approval framework so as to focus on only those risk elements that are deemed to be relevant to the product at issue, rather than rigidly following the enumerated list in § 23.600(c)(3); (ii) the Commission allow registrants to provide contingent or limited preliminary approval of new products at a risk level that would not be material to the registrant, in order to provide registrants with the opportunity to obtain experience with the product and to facilitate development of appropriate risk management processes for such product; and (iii) the Commission harmonize its new product policy rules with existing regulatory guidance in this area from banking regulators, the SEC, and SROs.

In response to the commenters' suggestions, the Commission confirms that the list of risks in § 23.600(c)(3)(ii) only need be considered if relevant to the new product, and the Commission is modifying the first sentence of the proposed rule to include the phrase ''all relevant risks associated with the new product.''

In response to SIFMA's recommendation, the Commission also is revising the proposed rule to permit SDs and MSPs to grant limited preliminary approval of new products (i) at a risk level that would not be material to the registrant, and (ii) solely for the purpose of facilitating development of appropriate operational and risk management processes for such product.

The Commission is not making any other changes to the rule as proposed. The new product policy was adapted from existing banking and SEC guidance in this area, and the Commission believes the rule as proposed provides adequate guidance with respect to the factors to be considered in determining whether a product is ''new'' and whether the product presents new risks that should be addressed prior to engaging in any transaction involving the new product.

9. Reporting of Risk Exposure Reports to the Commission—§ 23.600(c)(2)(ii)

Proposed § 23.600(c)(2)(ii) required SDs and MSPs to provide their senior management and governing body with quarterly Risk Exposure Reports detailing the registrant's risk exposure and any recommendations for changes to the risk management program, and copies of these reports were required to be furnished to the Commission within five business days of providing them to senior management.

The Working Group recommended that the Commission provide a standard form of report for any report to be required under the proposed rules, and to clarify what the governing body or senior management is expected to do with information delivered under the rules. The Working Group and Cargill also recommended that Risk Exposure Reports should be required to be submitted to the Commission only upon request so as not to drain Commission resources.

The Commission is not modifying the proposed rule to require SDs' and MSPs' periodic Risk Exposure Reports to be submitted to the Commission only upon request. As discussed below, the rule will require SDs and MSPs to provide these reports to their senior management and governing body no less than quarterly, thus the Commission believes that also furnishing the reports to the Commission quarterly will not be an additional burden.

In response to The Working Group, the Commission has determined not to provide a standard, prescriptive form for the report; rather the form of the report is left to the discretion of the registrant.

In response to The Working Group's request for clarification about what management is supposed to do with Risk Exposure Reports, the Commission believes these reports will serve important informational purposes related to the key risks associated with the registrants' swaps activities and help to ensure accountability at the highest levels for those swap activities of registrants.

10. Reporting to Senior Management and/or Governing Body—§ 23.600(c)(2)(ii)

Proposed § 23.600(c)(2)(ii) required SDs and MSPs to provide their senior management and governing body with Risk Exposure Reports detailing the registrant's risk exposure, and any recommendations for changes to the risk management program, quarterly and upon any material change in the risk exposure of the registrant.

The Working Group and Cargill each commented that Risk Exposure Reports should be provided to senior management and governing body annually. The Working Group argued that quarterly reporting would be too costly and burdensome, would take resources away from risk monitoring, and the frequency may force firms to disclose risk exposures before remedial steps can be taken.

The Commission is adopting the rule as proposed. The Commission does not believe that provision of Risk Exposure Reports to senior management and the governing body of a registrant four times a year is overly burdensome, but rather will provide management with the information necessary to monitor and make adjustments to risk levels in a timely manner.

11. Frequency of Review, Testing, and Audit—§ 23.600(e)

Proposed § 23.600(e) required SDs and MSPs to review and test their risk management programs quarterly using internal or external auditors independent of the business trading unit.

The Working Group, Cargill, and MetLife each recommended that both the frequency and the scope of audits of the risk management program be left to the discretion of the registrant, so long

as such audits are effective and are conducted at least annually. The Working Group and Cargill argued that this regime would provide the desired results without the unnecessary cost and administrative burden imposed by the proposed rules. The Working Group also recommended that the Commission define or clarify what ''testing'' of the Risk Management Program requires.

Having considered these comments, the Commission is modifying proposed § 23.600(e) to require only *annual* testing and audit of an SD's or MSP's Risk Management Program. The Commission has determined not to specify testing procedures at this time, but to leave the design and implementation of testing procedures to the reasonable judgment of each registrant.

12. Risk Categories—§ 23.600(c)(4)

As proposed, § 23.600(c)(4) required SD and MSP risk management programs to include, at a minimum, certain enumerated elements, including policies and procedures to monitor and manage market risk, credit risk, liquidity risk, foreign currency risk, legal risk, and operational risk.

SIFMA recommended that the Commission clarify that so long as the enumerated risks in § 23.600(c)(4) are systematically monitored and managed, the Commission does not intend to require that each enumerated risk be subject to distinct risk management processes.

While the rule requires that each enumerated risk must be the subject of distinct risk management policies and procedures, Commission does not intend to mandate specific risk management processes. The specific methods of monitoring and managing all risks associated with the swaps activities of an SD or MSP are left to the discretion of the registrant.

13. Market Risk—§ 23.600(c)(4)(i)

Proposed § 23.600(c)(4)(i) required SDs and MSPs to measure their market risk daily, including exposure due to unique product characteristics, volatility of prices, basis and correlation risks, leverage, sensitivity of option positions, and position concentration. The proposed rule would require that if valuation data is derived from pricing models, that such models be validated by qualified, independent persons.

The Working Group recommended that metrics for options, particularly the sensitivity for options, be required to be measured on a frequency less than daily, as metrics can require complex calculations, some of which must be done outside the trading or risk management system. The Working Group also recommended that the Commission clarify that models may be verified by independent, but internal, qualified persons.

In response to The Working Group's comments, the Commission clarifies that, to the extent that an input for measurement of market risk has a reasonable degree of accuracy over a period longer than one day, it would be permissible for a registrant's risk management policies to reflect the conclusion that such an input would not need to be calculated daily for purposes of the daily measurement of a registrant's market risk. The Commission also is modifying the proposed rule to clarify that pricing models may be verified by qualified, independent internal persons.

14. General Ledger Reconciliation—§ 23.600(c)(4)(i)(C)

The proposed regulations required SDs and MSPs to reconcile profits and losses resulting from valuations with the general ledger at least once each business day.

The Working Group commented that, to the extent that transaction valuations are tracked daily, they ordinarily would be tracked in the firm's trading or risk management system, not the general ledger system. The Working Group recommended that consolidation to the general ledger only be required monthly.

Having considered these comments, the Commission has determined that the rule need not require daily reconciliation to the general ledger in order to address the need to manage the risk of a failure to account properly for profits and losses. The Commission therefore is revising the proposed rule to require only that SDs and MSPs have policies and procedures to ensure ''periodic reconciliation of profits and losses resulting from valuations with the general ledger.''

15. Establishment of Credit Limits Prior to Trading—§ 23.600(d)(2)

Proposed § 23.600(d)(2) required that SDs and MSPs have policies and procedures requiring traders to transact only with counterparties for whom credit limits have been established.

The Working Group recommended that the Commission allow discretion to make exceptions to the requirement that trades only be executed with counterparties for which credit limits have been established for certain limited risk transactions. Arguing that some transactions carry no counterparty credit risk and that some SDs and MSPs may hedge their counterparty credit risk, SIFMA recommended that, instead of requiring establishment of credit limits prior to trading, the Commission require only that a credit risk evaluation be made prior to trading.

The Commission is adopting the rule as proposed. The Commission observes that the rule does not define ''credit limit'' and thus provides sufficient discretion to SDs and MSPs to implement policies addressing limited counterparty credit risk transactions.

16. Credit Risk Measurement—§ 23.600(c)(4)(ii)(A)

Proposed § 23.600(c)(4)(ii)(A) required SDs and MSPs to have credit risk policies and procedures providing for daily measurement of overall credit exposure to ensure compliance with counterparty credit limits.

Better Markets argued that the Commission's proposal for rules relating to credit risk are inadequate insofar as they do not provide guidance on how credit risk is to be measured. Better Markets recommended that the Commission's rules relating to management of credit risk require measurement of credit risk using the same techniques employed by derivatives clearing organizations (DCOs) registered with the Commission. Better Markets also specifically recommended that the Commission require credit risk policies of SDs and MSPs to address (i) the risk posed by collateral triggers (like credit rating downgrades) that may require immediate funding under stressful circumstances, and (ii) the credit risk of futures commission merchants (FCMs) acting for the SD or MSP as its clearing member.

Having considered Better Market's comments, the Commission is adopting the rule as proposed. The Commission believes it need not specify a credit risk measurement methodology because the adequacy of a registrant's individual credit risk measurement methodology will be assessed upon a review of a registrant's policies and procedures during registration or upon examination. The Commission also believes that credit risk to FCMs would be covered by the required monitoring and risk management of clearing members by DCOs and the Commission.

17. Liquidity Risk—§ 23.600(c)(4)(iii)(B)

The proposed rules required SDs and MSPs to test their procedures for liquidating all non-cash collateral in a timely manner and without significant effect on price.

SIFMA argued that firms assess the types of collateral that they are willing to accept based on the risk, volatility,

liquidity, and other characteristics of the collateral and additionally establish conservative haircuts for the valuation of collateral, not through testing by actual or simulated disposition of collateral. SIFMA therefore recommended that the Commission not require testing of liquidation procedures by simulated disposition, but only require policies and procedures for identifying acceptable collateral and establishing appropriate haircuts, taking into account reasonably anticipatable adverse price movements.

The proposed rule was not intended to impose a requirement that registrants test collateral liquidation procedures by means of actual or simulated disposition. However, to clarify this matter, the Commission is revising the proposed rule to require policies and procedures that ''assess'' rather than ''test'' procedures to liquidate all non-cash collateral in a timely manner without significant effect on price.

18. Foreign Currency Risk—§ 23.600(c)(4)(iv)

Proposed § 23.600(c)(4) required SDs and MSPs to measure the amount of capital exposed to fluctuations in the value of foreign currency daily.

The Working Group recommended that the Commission permit the frequency of measurement of capital exposed to fluctuations in the value of foreign currency to be left to the discretion of the firm, rather than mandating daily measurement.

The Commission believes that the foreign exchange markets are fluid and quick moving, and, therefore, the requirement for daily measurement is not excessive. Accordingly, the Commission is adopting the rule as proposed with respect to foreign currency risk.

19. Legal Risk—§ 23.600(c)(4)(v)

Proposed § 23.600(c)(4)(v) required SDs' and MSPs' risk management policies and procedures to address determinations that transactions and netting arrangements entered into by the registrant have a sound legal basis and documentation tracking to ensure completeness of transaction documentation.

SIFMA recommended that the Commission require only policies and procedures to identify and evaluate the legal risks arising in connection with the registrant's business.

The Commission is making no changes to the rule as proposed. The Commission believes that the two enumerated requirements with respect to legal risk are of special importance with respect to trade processing and risk measurement, but are by no means exhaustive of the legal risks arising in connection with a registrant's business, all of which must be identified by the registrant's risk management policies and procedures.

20. Operational Risk—§ 23.600(c)(4)(vi)

Proposed § 23.600(c)(4)(vi) required SDs and MSPs to establish policies and procedures for managing operational risks, including procedures accounting for reconciliation of all operating and information systems.

The Working Group and SIFMA recommended that the Commission clarify what is meant by ''reconciliation of operating and information systems,'' as information contained in systems may be reconciled, but systems themselves may not be.

Chris Barnard recommended that the proposed rule be expanded and be more specific about the types of operational risk to be monitored and controlled, arguing that operational risk failures effectively allow other types of risk, such as credit risk and market risk to be excessive. Mr. Barnard also recommended that the proposed rule be expanded to require management for the increased risks inherent in using programs or models from external providers or vendors to avoid using ''black boxes'' without controls and review.

The Commission agrees with commenters that data within operating and information systems should be reconciled, rather than the systems themselves. Consequently, the Commission is modifying the proposed rule to refer to reconciliation of data within operating and information systems. As modified, the Commission believes that the rule is sufficiently specific to enable SDs and MSPs to establish policies and procedures for adequately managing operational risks, and as such, the Commission is making no changes to the rule based on Mr. Barnard's comments. Nonetheless, the Commission notes that Mr. Barnard's concern about black boxes is addressed, in part, by the requirement to have policies and procedures governing the use and supervision of trading programs under proposed § 23.600(d)(9), as discussed further below.

21. Use of Central Counterparties—§ 23.600(c)(5)

Proposed § 23.600(c)(5) required SDs and MSPs to establish policies and procedures related to central clearing of swaps, including policies that require the use of clearing when a swap is subject to a mandatory clearing determination issued by the Commission, policies setting forth conditions for the voluntary use of central clearing as a means of mitigating counterparty credit risk, and policies requiring diligent investigation into the adequacy of financial resources and risk management procedures of any central counterparty through which the registrant clears.

The Working Group argued that the adequacy of resources and risk management at CCPs registered with the Commission should be monitored by the Commission, not individual firms. EEI requested that the Commission clarify that proposed § 23.600(c)(5) is not seeking to require SDs to use central clearing to mitigate risk if clearing is not required under a valid exemption.

The Commission is adopting the rule regarding use of central counterparties as proposed. The Commission's registration of a central counterparty as a DCO is based on a determination that the applicant meets core principles under the Commodity Exchange Act and Commission regulations. It does not, however, serve as a substitute for the due diligence of registrants who must evaluate the use of a central counterparty in light of their own circumstances. In addition, SDs and MSPs may elect to clear swaps that are not required to be cleared on a voluntary basis through central counterparties that are not registered with the Commission. In those instances, an SD or MSP engaging in some manner of due diligence prior to submitting a swap for clearing would be part of a prudent risk management program. In response to EEI's comment, the Commission observes that the rule would require only that registrants evaluate the use of central clearing as a means of mitigating counterparty credit risk and as part of their overall risk management strategy. Moreover, the rule expressly notes the exception from mandatory clearing that is provided for under section 2(h)(7) of the CEA.

22. Business Trading Unit—§ 23.600(d)

As proposed, § 23.600(d) required SDs and MSPs to establish policies and procedures that require all trading policies to be approved by the governing body of the registrant.

The Working Group recommended that the governing body of an SD or MSP be permitted to delegate approval of trading policies to those with expertise.

The revisions to the definition of governing body discussed above, which allows for a governing body to consist of a committee or the CEO, sufficiently address the Working Group's concerns.

The Commission thus has made no changes to the rule.

23. Transaction Entry by Traders—§ 23.600(d)(5)

Proposed § 23.600(d)(5) required SDs and MSPs to establish policies and procedures that require each trader to follow established policies and procedures for executing and confirming all transactions. Further, in a discussion about the independence of the risk management unit in the preamble to the proposal, the Commission stated that ''personnel responsible for recording transactions in the books of the swap dealer or major swap participant cannot be the same as those responsible for executing transactions.''

The Working Group requested clarification about requirements for transaction entry based on the statements made in the preamble to the proposal. The Working Group argued that if the reference to recording transactions in the books of a firm is intended to refer to entries into the general ledger system, then the Working Group agreed that this process should be subject to the usual segregation of duties requirements that protect the general ledger system, but that there is no reasonable basis to prohibit individuals who execute transactions from entering the information regarding such transactions into a firm's trading or risk management system.

BGA commented that typical practice is for traders to enter the trade into the deal monitoring system, and then the risk control group performs a daily review of all new and amended trading activity. BGA explained that the mid-office risk control review is followed by a second review of the trade activity performed by the back-office confirmations group, which generates confirmations and performs portfolio reconciliations to match key trade attributes with counterparties. BGA requested clarification that the reference to ''recording transactions in the books'' in the proposal preamble is not intended to restrict the initial recording of the trade into the deal capture system by the trader, but refers to the daily review and confirmation and portfolio reconciliation processes performed by the mid and back offices.

SIFMA requested that the Commission confirm that compliance with the rule would not preclude trading personnel from entering the trades they execute into a registrant's trade capture system, provided that the registrant has appropriate policies and procedures reasonably designed to identify the entry of fictitious trades or the failure to accurately enter actual trades.

In response to these comments, the Commission confirms that the rule is not intended to restrict the initial recording of trades into a trade capture system by the trader. Rather, the rule requires traders to follow established policies and procedures governing trade execution and confirmation.

24. Monitoring of Trading—§ 23.600(d)(4) & (d)(9)

As proposed, § 23.600(d)(4) required SDs and MSPs to establish policies and procedures designed to monitor each trader throughout the trading day to prevent the trader from exceeding any limit to which the trader is subject, or from otherwise incurring undue risk. The proposed regulations also require registrants to ensure that trade discrepancies are brought to the immediate attention of senior management and are documented.

The Working Group, with respect to internal limits, recommended that daily monitoring should be at the product desk level, not the trader level, as market practice is to set internal limits at the desk level. Also, the Working Group and SIFMA requested that the Commission clarify that ''monitor each trader throughout the trading day'' does not mean continuous monitoring, and recommended that the Commission remove the requirement that firms monitor traders to prevent traders from ''incurring undue risk'' because the meaning of the phrase is ambiguous. The Working Group also recommended that the Commission define ''trade discrepancies'' and add a materiality standard to the escalation requirement.

MetLife commented that intraday monitoring of traders may be excessive for some MSPs, especially MSPs that use swaps only for hedging purposes. MetLife recommended that the Commission allow the type of monitoring and its frequency to be determined by an MSP's risk management unit and governing body.

Having considered these comments, the Commission is revising the proposed rule to require monitoring be performed to prevent the incurrence of ''unauthorized risk'' rather than ''undue risk.'' The Commission believes this formulation better reflects the intent of the rule, which is to ensure that SDs and MSPs have instituted safeguards against the risk of losses to the firm due to rogue trading.

In response to The Working Group's comment requesting a definition of ''trade discrepancies,'' the Commission notes that the term ''trade discrepancies'' is intended to refer to any discrepancies between the SD or MSP and its counterparties and to any discrepancies in records or systems of the SD or MSP. Also in response to The Working Group's recommendation that the proposed rule be modified to add a materiality standard for reporting of trade discrepancies to management, the Commission is modifying the rule to require that only trade discrepancies that are not immaterial, clerical errors be brought to the immediate attention of management of the business trading unit. The rule continues to require that all trade discrepancies be documented.

The Commission has made no other changes to the rule based on the comments received. The Commission believes that prudent risk management requires intraday monitoring of traders to detect prohibited activity that may be otherwise undetectable. The Commission notes that the rule requires monitoring of traders to prevent traders from ''exceeding any limit to which the trader is subject'' but does not specify the types of limits to be monitored. Thus, the Commission observes that the setting of limits requiring intraday monitoring is left to the discretion of each SD and MSP.

In addition, the Commission is finalizing the requirement that SDs and MSPs have policies and procedures governing the use and supervision of trading programs under proposed § 23.600(d)(9), but deleting the term ''algorithmic'' from the rule text. This rule is an important measure for ensuring that SDs and MSPs monitor their trading activities. In addition to the risk management requirements under this rule, the Commission notes that the use of trading programs would be subject to, among other things, any applicable prohibitions on disruptive trading practices under the CEA and Commission regulations. The Commission also anticipates addressing the related issues of testing and supervision of electronic trading systems and mitigation of the risks posed by high frequency trading.

25. Brokers—§ 23.600(d)(8)

Proposed § 23.600(d)(8) required SDs and MSPs to establish policies and procedures to ensure that the risk management unit reviews broker's statements, reconciles brokers' charges to estimates, reviews and monitors broker's commissions, and initiates payment to brokers.

The Working Group, SIFMA, and MetLife each recommended that the risk management unit not be tasked with reviewing brokers' statements, monitoring commissions or initiating broker payments, as these functions are

currently handled by operations or other control units.

The Commission agrees with commenters that review of brokers' statements, monitoring commissions or initiating broker payments need not be performed by risk management personnel. The Commission is revising the proposed rule to replace this requirement with a requirement that risk management policies and procedures include periodic audit of broker's statements and payments by persons independent of the business trading unit. This change provides the relief requested by commenters while maintaining the requirement that risks connected to the use of brokers are adequately monitored and managed.

H. Monitoring of Position Limits—§ 23.601

To implement section 4s(j)(1) of the CEA, the Commission proposed § 23.601 in the Duties NPRM, which required SDs and MSPs to establish policies and procedures to monitor, detect, and prevent violations of applicable position limits established by the Commission, a designated contract market (DCM), or a swap execution facility (SEF), and to monitor for and prevent improper reliance upon any exemptions or exclusions from such position limits. Proposed § 23.601 also required SDs and MSPs to: (i) Convert all swap positions into equivalent futures positions using the methodology set forth in Commission regulations; (ii) provide training to all relevant personnel on applicable position limits on an annual basis and promptly upon any change to applicable position limits; (iii) test its procedure for monitoring and preventing position limit violations for adequacy and effectiveness each month; (iv) audit its position limit procedures annually; (v) implement an early warning system designed to alert senior management when position limits are in danger of being breached; and (vi) report any detected violation of applicable position limits to the registrant's governing body and to the Commission. Only four market participants and trade groups provided comments on the Commission's proposal.

1. Monitoring for Violations of Position Limits—§ 23.601(a)

The Working Group argued that it is not possible to determine whether transactions that individual traders enter into violate position limits without placing the transactions in the context of an entire portfolio and any relevant hedge exemptions. The Working Group requested clarification that the requirement for intraday monitoring of traders under proposed § 23.600(d)(4) does not require monitoring of individual traders for violations of position limits, and that monitoring for violations of position limits is only required in the context of aggregate swaps and futures portfolios.

The Commission believes that The Working Group's request for clarification is outside the scope of these rules. The level at which monitoring for violations of position limits will be required is subject to the final position limit rules,[20] and the Commission directs SDs and MSPs to review new § 151.7 of the final position limit rules for guidance when establishing the Position Limit Procedures required by this rule.

BGA expressed concern about the requirement that an SD or MSP ''prevent violations'' of position limits established by the Commission. BGA argued that despite having a robust compliance program, it is impossible for an SD or MSP to ''prevent violations'' because a company cannot before-the-fact prevent a trader from entering a deal that causes a position limit violation. Thus, BGA recommended that the Commission clarify that as long as an SD or MSP provides training on the position limits and establishes and enforces policies for monitoring, detecting, and curing violations, they will have met the obligation to ''prevent violations.''

The Commission agrees with BGA that SDs and MSPs should be held to a standard of reasonableness in regard to efforts to prevent violations of position limits. The Commission therefore is revising the proposed rule to state that ''[e]ach swap dealer and major swap participant shall establish and enforce written policies and procedures that are *reasonably* designed to monitor for and prevent violations of applicable position limits * * *'' (modification to rule text in italics).

2. Training on Applicable Position Limits—§ 23.601(c)

SIFMA recommended that the Commission revise § 23.601(c) to provide that a change in position limit levels will not trigger ''training,'' but only require effective notification. The Commission agrees with SIFMA's view and is revising the proposed rule accordingly.

[20] *See* 17 CFR 151.7, Position Limits for Futures and Swaps, 76 FR 71626, 71692 (Nov. 18, 2011) (adopting 17 CFR 151.7 pertaining to the aggregation of positions).

3. Diligent Monitoring and Diligent Supervision To Ensure Compliance—§ 23.601(d)

SIFMA recommended that the Commission clarify that monitoring for compliance with position limits need not be performed by risk management personnel, but may be performed by independent compliance, operations, or supervisory personnel.

The rule does not require that position limit monitoring be performed by risk management personnel, nor was such a requirement intended. The Commission confirms that monitoring procedures may be conducted at the discretion of the SD or MSP.

4. Reporting Violations to the Governing Body and the Commission—§ 23.601(e)

The Working Group and MetLife doubted the utility of alerting the governing body of nonmaterial violations of position limits as required under proposed § 23.601(e), and recommended that the Commission require alerting the governing body only when a violation is material and allow registrants to define escalation procedures based on materiality in their Position Limit Procedures.

The Commission does not believe that reporting of position limit violations to the governing body of the registrant should be subject to a materiality standard and is adopting the rule as proposed. The Commission intends the reporting rule to ensure accountability for compliance with position limits at the highest levels of management and believes applying a materiality standard to such reporting would undermine the intention of the rule and introduce unnecessary complication for registrants trying to determine how much of a breach would amount to a material breach. However, the Commission observes that a registrant's governing body could take into account the magnitude of the breach and other facts and circumstances in remediating its monitoring program. For instance, a governing body would respond differently to small, inadvertent breaches that are promptly corrected than larger, repeated violations.

With respect to reporting of position limit violations to the Commission, The Working Group argued that the reporting of on-exchange violations of position limits to the Commission is already done by DCMs and will likely be the responsibility of SEFs as well, so SDs and MSPs should not be required to report on-exchange violations to avoid inundating the Commission with redundant information. The Working Group conceded, however, that if

position limit rules require the aggregation of exchange-traded swaps and over-the-counter swaps, then SDs and MSPs should be required to report position limit violations that occur because of over-the-counter swaps, but recommended that such reporting requirement be subject to a materiality standard.

The Commission agrees that on-exchange position limit violations need not be reported to the Commission by registrants, as they will be reported by DCMs or SEFs and has modified the final rule accordingly.

5. Testing and Audit of Position Limit Procedures—§ 23.601(f) and (h)

With respect to monthly testing of Position Limit Procedures required under proposed § 23.601(f) and annual audit required under proposed § 23.601(h), SIFMA recommended that testing and audit of Position Limit Procedures be required only annually and not be required to be done all at the same time, The Working Group recommended that testing only be required on a semi-annual basis (or on a more frequent basis as the firm might determine to be effective), and MetLife requested that the Commission permit the frequency of testing to be determined by an MSP based on the extent of its swap activities. MetLife also recommended that there be a clear exemption from testing requirements for MSPs that do not trade in swaps for which position limits have been established. SIFMA requested that the Commission clarify that testing should consist of testing for accurate capture of all relevant desk positions by position reporting systems and that § 23.601(h) be revised to allow for ''agreed upon procedures'' for external auditors.

Having considered these comments, the Commission has determined that monthly testing of Position Limit Procedures by registrants may be unduly burdensome, but believes that only annual or semi-annual testing would be inadequate as such could allow violations to remain undetected for long periods. The Commission therefore is modifying the proposed rule to require quarterly testing, and, in response to the comment of MetLife, only if the registrant trades in swaps for which position limits have been established. The annual audit requirement is being adopted as proposed. In response to the request of SIFMA, the Commission confirms that testing of Position Limit Procedures is expected to entail testing of the accuracy of capture of all relevant desk positions by position reporting systems.

6. Quarterly Reporting of Compliance With Position Limits—§ 23.601(g)

With respect to quarterly reporting of compliance with position limits to the chief compliance officer, senior management, and governing body under proposed § 23.601(g), The Working Group recommended that the proposed rule should be revised to require only annual reports to the entity's senior management and governing body.

As stated above, the Commission intends the reporting rule to ensure accountability for compliance with applicable position limits at the highest levels of management. The Commission believes that the burden of quarterly reporting is outweighed by the benefit of timely notification to decision makers within the SD and MSP of the entity's record of compliance with applicable position limits, thus providing a timely opportunity to adjust or revise Position Limit Procedures to prevent future violations, if necessary.

I. Diligent Supervision—§ 23.602

Proposed § 23.602 was intended to implement section 4s(h)(1)(B) of the CEA, which requires each SD and MSP to conform with Commission regulations related to diligent supervision of the business of the SD and MSP. The proposed regulations required SDs and MSPs to establish a system to supervise all activities relating to its business performed by its partners, members, officers, employees, and agents, that such system be reasonably designed to achieve compliance with the CEA and Commission regulations, that such system designate a person with authority to carry out the supervisory responsibilities of the SD or MSP, and that all such supervisors meet qualification standards that the Commission finds necessary or appropriate.

The Working Group recommended that the Commission not require designation of a single individual with responsibility for supervision, but should allow for designation of a reporting line and that designated supervisors should be permitted to delegate supervisory authority. The Working Group also recommended that SDs and MSPs be given discretion to determine supervisor qualifications, rather than meet ''qualification standards as the Commission finds necessary or appropriate.''

MFA recommended that the Commission clarify that the rules do not impose any new (a) fiduciary obligations or duties (i.e., duties beyond those to which participants in the futures and derivatives markets would otherwise be subject to by agreement or by operation of common law), or (b) supervisory duties on market participants. MFA argued that proposed § 23.602 (Diligent Supervision) is similar to the NFA's supervision rule for FCMs (Compliance Rule 2–9), and MFA is concerned that § 23.602 may impose fiduciary and supervisory obligations on registrants similar to those that the NFA imposes on FCMs with respect to third parties.

In response to The Working Group's first comment, the Commission is revising the proposed rule to require ''at least one person'' rather than ''a person'' be designated with authority to carry out supervisory responsibilities, which should permit SDs and MSPs more flexibility in designing and implementing the required supervisory system. With respect to the remaining comments of The Working Group, the Commission believes that full accountability for compliance with the CEA and Commission regulations is best served by requiring designation of individuals with supervisory responsibility and that reporting line responsibility is not adequate.

With respect to MFA's comments, the Commission observes that the rule relates generally to the supervision necessary to achieve compliance with the CEA and Commission regulations by the registrant. Many of the specific activities to be supervised are subject to the CEA and other Commission rules that are outside the scope of this rulemaking. The Commission does not intend that § 23.602 impose a fiduciary duty on SDs or MSPs beyond that which would otherwise exist.

Other than the foregoing, the Commission has adopted the rule as proposed.

J. Business Continuity and Disaster Recovery—§ 23.603

Proposed § 23.603 required SDs and MSPs to establish a business continuity and disaster recovery plan that includes procedures for and the maintenance of back-up facilities, systems, infrastructure, personnel, and other resources to achieve the timely recovery of data and documentation and to resume operations generally within the next business day. The proposed regulations also required SDs and MSPs to have their business continuity and disaster recovery plan tested annually by qualified, independent internal audit personnel or a qualified third party audit service.

Tellefsen and Company, L.L.C. (Tellefsen) commented that most, if not all, of potential SDs have the technology and network infrastructure in place to

achieve a next day recovery time objective. However, Tellefsen recommended that the Commission carefully evaluate the business continuity management capabilities of MSPs before establishing a hard date by which these metrics must be in place, as the Commission may have greatly underestimated the time and scope of work for firms to develop, implement and test their business continuity management capabilities (Tellefsen estimates 68–200 person days). The Working Group also argued that the Commission should not require next business day recovery for non-systemically important SDs or MSPs, but should only require recovery ''reasonably promptly.''

The Working Group argued that the Commission should not require staffing of back-up facilities to avoid the burden of requiring two persons for the same job. The Working Group also recommended that the Commission should not require annual testing of the business continuity and disaster recovery plan by independent auditors because independent audits would be too costly.

SIFMA recommended that the Commission clarify that an SD's or MSP's business continuity and disaster recovery plan may be part of a consolidated plan established for the various entities in a holding company group if they share common personnel, premises, resources, systems, and infrastructure. SIFMA also recommended that the Commission permit SDs and MSPs subject to the business continuity and disaster recovery requirements of a prudential regulator, or other regulator determined to be comparable by the Commission, to comply with § 23.603 on a substituted compliance basis.

The Commission believes that Tellefsen's concerns regarding the ability of MSPs to comply with the required recovery period will be addressed through the phased implementation of the rule, discussed below.

In response to The Working Group's comment regarding staffing of back-up facilities, the Commission is modifying the proposed rule to clarify that, so long as prompt recovery is reasonably ensured, SDs and MSPs may provide for alternative staffing of back-up facilities as required under the circumstances. The Commission also agrees with the Working Group that annual testing may be performed by qualified internal personnel and is modifying the proposed rule accordingly. However, the Commission believes that independent audits are required to ensure that business continuity and disaster recovery plans remain in compliance with the rule, but that annual audits would be unnecessary and unduly burdensome and costly. Therefore, the Commission is revising the proposed rule to require independent audits only every three years.

The Commission believes that all SDs and MSPs may be critically important to the proper functioning of the swaps market. SDs are critical participants in the swap market and MSPs may, by definition, have exposures that could have serious adverse effects on the financial stability of the United States. Therefore, the Commission continues to believe that a one business day recovery period is the necessary objective for SDs' and MSPs' business continuity and disaster recovery plans. Accordingly, the Commission is not modifying the final rule in this respect.

In response to SIFMA's comments, the Commission confirms that so long as a consolidated business continuity and disaster recovery plan established for the various entities in a holding company group that includes an SD or MSP, or any such plan that is required by a prudential regulator of the SD or MSP, meets the requirements of the rule, such SD or MSP would be in compliance with the Commission's rule. The Commission believes that this result is contemplated by the rule as proposed and so is not modifying the rule in this respect.

K. General Information: Availability for Disclosure and Inspection—§ 23.606

Proposed § 23.606 required SDs and MSPs to make available for disclosure and inspection by the Commission and the SD's or MSP's prudential regulator, all information required by, or related to, the CEA and Commission regulations.

The Working Group recommended that the Commission clarify what is meant by ''available for disclosure'' if such is different from ''available for inspection.'' The Working Group also argued that SDs and MSPs should not be required to revise information systems to store information specifically required by each Commission rule, because storage would require extensive investigation that is unnecessary to ensure compliance with the rule.

Having considered The Working Group's comments, the Commission is adopting the rule as proposed. The Commission does not believe the rule specifies or requires any particular storage medium or methodology, but rather only requires SDs and MSPs to have information systems capable of producing the required information promptly. The Commission also has determined not to define further ''available for disclosure'' or ''available for inspection'' because it believes these terms as employed in the rule have their plain meanings.

L. Antitrust Considerations—§ 23.607

Proposed § 23.607 prohibited SDs and MSPs from adopting any process or taking any action that results in any unreasonable restraint of trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the CEA. The proposed rule also required SDs and MSPs to adopt policies and procedures to prevent such actions.

SIFMA agreed with the Commission's proposed policies and procedures approach. SIFMA argued however that § 23.607(a) goes further, by imposing a blanket prohibition on a registrant adopting any process or taking any action that results in any unreasonable restraint of trade, or imposes any material anticompetitive burden on trading or clearing (unless necessary or appropriate to achieve the purposes of the CEA). SIFMA expressed concern that, given the counterparty rescission and private right of action provisions of the CEA, this prohibition could introduce additional private liability that is unnecessary in light of the enforcement authority of the Commission and antitrust authorities and existing private rights of action under the antitrust laws. SIFMA therefore recommended that the Commission delete § 23.607(a) and instead rely upon the policies and procedures requirement included in § 23.607(b).

Having considered SIFMA's comments, the Commission is adopting the rule as proposed. The blanket prohibition in § 23.607(a) is taken directly from the statutory provision and appropriately implements the prohibition in section 4s(j)(6) of the CEA.

M. Conflicts of Interest Policies and Procedures by SDs, MSPs, FCMs, and IBs—§ 23.605, § 1.71

As discussed above, section 4s(j) of the CEA, as added by section 731 of the Dodd-Frank Act, sets forth certain duties for SDs and MSPs, including the duty to implement conflict-of-interest systems and procedures. Specifically, section 4s(j)(5) mandates that SDs and MSPs implement conflict-of-interest systems and procedures that ''establish structural and institutional safeguards to ensure that the activities of any person

within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act.'' Section 4s(j)(5) further requires that such systems and procedures ''address such other issues as the Commission determines to be appropriate.'' Proposed § 23.605, as set forth in the SD/MSP Conflicts NPRM, addressed the statutory mandate of section 4s(j)(5).

In relevant part, section 732 of the Dodd-Frank Act amended section 4d of the CEA by creating a new subsection (c), which mandates that the Commission ''require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures.'' New section 4d(c) mandates that such systems and procedures ''establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons.'' New section 4d(c) further requires that such systems and procedures ''address such other issues as the Commission determines to be appropriate.'' Proposed § 1.71, as set forth in the FCM/IB Conflicts NPRM, addressed the statutory mandate of section 4d(c).

As proposed, §§ 23.605 and 1.71 were identical in all material respects. The Commission received 29 comment letters to the SD/MSP Conflicts NPRM and 26 comment letters to the FCM/IB Conflicts NPRM. Many commenters provided comments addressing identical provisions or issues in both proposed rules. The discussion below thus addresses comments to both proposed rules unless otherwise indicated.

1. Compliance Oversight by Self-Regulatory Organizations (SROs)

Although proposed §§ 23.605 and 1.71 prescribed the implementation of conflict-of-interest policies and procedures by SDs, MSPs, FCMs, and IBs, the proposal did not address compliance oversight by SROs. Nonetheless, the Commission received comments on whether the conflict-of-interest policies and procedures mandated under sections 4s(j)(5) and 4d(c) of the CEA should be prescribed by the Commission or by an SRO.

The Futures Industry Association (FIA), ISDA, and SIFMA, in a joint comment, argued that an SRO should oversee and enforce the conflict-of-interest requirements on SDs, MSPs, FCMs, and IBs. FIA, ISDA, and SIFMA stated that SROs would be in a better position than the Commission to address the likely need for future amendments to the rule. The comment suggested that the Commission establish a framework governing the implementation of conflict-of-interest policies and procedures, and instruct the appropriate SRO to write detailed compliance requirements within that framework, including the execution of audit and compliance functions, and the issuance of specific guidance that would be subject to the Commission's review and approval. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

Michael Greenberger and UNITE HERE commented that the monitoring and enforcement of the implementation of conflict-of-interest policies and procedures for SDs and MSPs should be carried out by the Commission, as opposed to SROs.

Having considered the comments, the Commission is adopting the rule as proposed on this issue. Unlike section 15D of the Securities Exchange Act of 1934, which mandated that conflict-of-interest rules be adopted either by the SEC, or by a registered securities association or national securities exchange, sections 4s(j)(5) and 4d(c) of the CEA as added by sections 731 and 732 of the Dodd-Frank Act, respectively, direct the CFTC to promulgate such rules. The Commission will continue to collaborate with SROs on conflict-of-interest policies and procedures, particularly with respect to their effectiveness.

2. Exemptive Relief

The Commission's proposal in the FCM/IB NPRM did not expressly address issues surrounding the Commission's exemptive authority. Nonetheless, the Committee on Futures and Derivatives Regulation of the New York City Bar Association argued that, due to the unprecedented scope and breadth of the Commission's rulemakings, the Commission will encounter situations it had not previously considered, rules that do not operate in the manner intended, or unintended consequences when the rules are applied in a specific context. In such situations, exemptive relief would be appropriate and the Commission should prepare for such situations by providing Commission staff with the authority to grant exemptive relief in each rule. Having considered the comment, the Commission does not believe it appropriate to address exemptive relief in this rule. Rather, any person may submit a request for an exemptive, no-action or interpretive letter, in accordance with the procedures set forth in Commission Regulation 140.99.[21] Further, should any person, in the future, believe that an amendment to a Commission regulation is warranted, such person may petition the Commission for an amendment in accordance with the procedures set forth in Commission Regulation 13.2.[22]

3. Consistent Conflicts-of-Interest Treatment Between FCMs/IBs and SDs/MSPs

Pierpont Securities Holdings LLC expressed agreement with the Commission's proposal to apply § 23.605 and § 1.71 in a manner that is consistent with one another. The consistency is particularly important in situations where a FCM is an affiliate of, or dually registered as, an SD or MSP. The Commission acknowledges the comment and notes its belief that such consistent treatment is reasonable and reflects the statutory directives and policy goals underlying sections 4d(c) and 4s(j)(5) of the CEA, as amended by sections 732 and 731 of the Dodd-Frank Act, respectively.

4. Definitions—§ 23.605(a), § 1.71(a)

a. Business Trading Unit—§ 23.605(a)(2), § 1.71(a)(2)

The proposed rules defined the term ''business trading unit'' as ''any department, division, group, or personnel of a [SD, MSP, FCM, or IB] or any of its affiliates, whether or not identified as such, that performs or is involved in any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a [SD, MSP, FCM, or IB].''

The Commission received a comment from the FHLBs, and a joint comment from FIA, ISDA, and SIFMA, arguing that the Commission should clarify that § 23.605(a)(2) and § 1.71(a)(2) apply to traditional ''front office'' functions and not to those functions that support the

[21] 17 CFR 140.99.

[22] 17 CFR 13.2.

front office, such as legal, compliance, operations, credit, and human resources functions. FIA/ISDA/SIFMA noted that in order to fulfill legal, compliance, and risk management functions, firms are integrated such that the exclusion of such control and/or support functions should be excluded from the definitions of business trading unit and clearing unit. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

In the preambles of the SD/MSP and FCM/IB NPRMs, the Commission noted that the proposed rules are not intended to hinder the execution of sound risk management programs by SDs, MSPs, FCMs, IBs, or by any affiliate of an SD, MSP, FCM, or IB. The Commission's proposals largely addressed the issue raised by the commenters in the proposed definitions of ''non-research personnel'' at § 23.605(a)(5) and § 1.71(a)(5), which carved out legal and compliance personnel from those definitions. In addition, the final rule modified the definition of non-research personnel to those employees who are not directly responsible for, or otherwise not directly involved in, research or analysis intended for inclusion in a research report. The Commission believes its prior statements and these changes should clarify the scope of the definitions.

Nonetheless, upon reviewing the comments, the Commission has determined it appropriate to modify the definitions. The rule language, as originally proposed, is amended in the final rules to: (1) Clarify that the term includes those persons who directly perform or exercise supervisory authority over the performance of the tasks listed in the rule, and not those who merely are ''involved in'' such activities, such as the legal, compliance, human resources, risk management, operations, and other support functions; and (2) exclude price verification for risk management purposes from the types of pricing activities covered by the definitions. The Commission believes that these changes will address the issues raised by the commenters while ensuring that the rule text properly reflects the intent of the Commission.

b. Clearing Unit—§ 23.605(a)(3), § 1.71(a)(3)

The proposed rules defined the term ''clearing unit'' as ''any department, division, group, or personnel of a [SD, MSP, FCM, or IB] or any of its affiliates, whether or not identified as such, that performs or is involved in any proprietary or customer clearing activities on behalf of a [SD, MSP, FCM, or IB].''

Similar to the concerns raised in comments on the proposed definition of ''business trading unit,'' FIA, ISDA, and SIFMA, in a joint comment, argued that the Commission should clarify that § 23.605 and § 1.71 applies to traditional ''front office'' functions and not to functions that support the front office, such as legal, compliance, operations, credit, and human resources functions. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

As stated above with respect to the comments received on the proposed definition of ''business trading unit,'' the Commission noted in the preambles to the SD/MSP and FCM/IB Conflicts NPRMs that the proposed rules are not intended to hinder the execution of sound risk management programs by SDs, MSPs, FCMs, IBs, or by any affiliate of an SD, MSP, FCM, or IB. The NPRMs largely addressed the issue raised by the commenters in the proposed definitions of ''non-research personnel'' at § 23.605(a)(5) and § 1.71(a)(5), which carved out legal and compliance personnel from that definition. The Commission reiterates its prior statements on this issue, which should make clear the scope of the definitions.

Nonetheless, upon reviewing the comments, the Commission has determined it appropriate to modify the definitions. The rule language, as originally proposed, is amended in the final rules to clarify that the term includes those persons or groups who perform or exercise supervisory authority over the performance of the tasks listed in the rules, and not those who merely are ''involved in'' such activities. The Commission believes that these changes will address the issues raised by the commenters while ensuring that the rule text properly reflects the intent of the Commission.

c. Non-Research Personnel—§ 23.605(a)(5)

The proposed rule defined the term ''non-research personnel'' as ''any employee of the business trading unit or clearing unit, or any other employee of the [SD] or [MSP] who is not directly responsible for, or otherwise involved with, research concerning a derivative, other than legal or compliance personnel.''

EEI argued that the Commission should limit the definition of non-research personnel to include only those persons involved with trading, pricing, or clearing activities, and not to other areas.

Upon reviewing the comment, the Commission is adopting the language as originally proposed. The Commission believes that changing the language in the manner suggested by the commenter would increase the risk that SDs or MSPs might attempt to evade the restrictions set forth in the rule.

d. Public Appearance—§ 23.605(a)(6), § 1.71(a)(6)

The proposed rules defined the term ''public appearance'' as ''any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons, or interview or appearance before one or more representatives of the media, radio, television or print media, or the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning a derivatives transaction.[23] This term does not include a password-protected webcast, conference call, or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current research report or other documentation that contains the required applicable disclosures, and that the research analyst appearing at the event corrects and updates during the public appearance any disclosures in the research report that are inaccurate, misleading, or no longer applicable.''

FIA, ISDA, and SIFMA, in a joint comment, argued that the definition of public appearance (speaking before 15 or more ''persons'') should articulate that the term ''person'' includes both a customer that is a natural person and one that is an entity. For example, if a single institutional customer sends 16 employees to a forum held by an SD, MSP, FCM, or IB, each of those employees should not be counted as a ''person;'' rather, employees from a single institutional customer should be deemed to be one ''person'' at that forum, for purposes of the rule. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

Upon reflection, the Commission agrees with the commenters, and is altering the rules to incorporate the

[23] The Commission notes that SD and MSP communications with counterparties and potential counterparties also are addressed in the Commission's external business conduct standards rules. *See* Subpart H of Part 23 of the Commission's Regulations, Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734 (Feb. 17, 2012).

recommendation offered by the commenter. Specifically, the Commission is modifying the rule to clarify that the term ''persons'' in this context refers to either natural persons or entities. Thus, for example, if a single entity sends multiple natural persons as representatives to a public speaking activity that may be subject to the rule, such natural persons would be counted as a single ''person'' for purposes of determining whether the public speaking activity meets the definition of ''public appearance.''

e. Research Department—§ 23.605(a)(8), § 1.71(a)(8)

The proposed rules defined the term ''research department'' as ''any department or division that is principally responsible for preparing the substance of a research report relating to any derivative on behalf of a [SD, MSP, FCM, or IB], including a department or division contained in an affiliate of a [SD, MSP, FCM, or IB].''

FIA, ISDA, and SIFMA, in a joint comment, argued that the scope of ''research department,'' and the restrictions imposed by the proposed rules concerning research departments, should not apply to the global affiliates of an SD, MSP, FCM, or IB. FIA/ISDA/SIFMA posited that the imposition of such restrictions on global affiliates would create significant logistical hurdles and expenses for multinational firms, especially in situations where an affiliate has no significant interaction with the SD, MSP, FCM, or IB. Further, FIA/ISDA/SIFMA suggested that local regulations governing non-US affiliates may not permit such non-US affiliates to comply with the rules. As an alternative, FIA/ISDA/SIFMA suggested that the Commission limit the rules to requiring disclosure ''on third party research reports,'' and focus the Commission's enforcement resources on SDs, MSPs, FCMs, and IBs that attempt to evade the rule by moving research analysts to affiliates. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

Upon reviewing the comments, the Commission has determined it appropriate to adopt the rules as originally proposed. The Commission believes that the alternatives suggested by FIA/ISDA/SIFMA would increase the risk of evasion by multinational registrants. Such risk of evasion outweighs any benefit to be derived from the proffered alternative. However, to clarify any ambiguity that may exist in the rules adopted herein, the Commission confirms that a holding company need not examine the research functions of all of its affiliates under these rules; rather, a holding company needs only to look at those research groups doing research on behalf of an SD, MSP, FCM, or IB. In light of its stated intent, the Commission believes that the cost-effectiveness of the rules will be promoted.

f. Research Report—§ 23.605(a)(9), § 1.71(a)(9)

The proposed rules defined the term ''research report'' as: ''[A]ny written communication (including electronic) that includes an analysis of the price or market for any derivative, and that provides information reasonably sufficient upon which to base a decision to enter into a derivatives transaction.'' However, the proposals expressly excluded four categories of communications from coverage by the definitions.

FIA, ISDA, and SIFMA, in a joint comment, argued that the exclusions from the definition of ''research report'' should be expanded to include general market discussions and other communications that are not ''research reports'' in other regulatory contexts. The definitions should be limited to those research reports analyzing a specific derivative or futures transaction. Exclusions set forth in other regulatory contexts—specifically NASD Rule 2711(a)(9)(A) and SEC Regulation AC—should be included in the Commission's definitions of ''research report.'' FIA/ISDA/SIFMA further argued that communications produced by a business trading unit labeled as a ''trading/sales desk product'' and as ''non-research'' should be excluded from the definitions of research report. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

EEI argued that the Commission should exclude from the definition any communication between an SD or MSP, and its regulator, concerning hedging activity. The commenter posited that firms with small trading operations should be permitted to publish occasional research reports to justify trading decisions, without being subject to the rules set forth in the SD/MSP Conflicts NPRM.

The National Futures Association (NFA) argued that the definition in proposed § 1.71(a)(9) was too broad and suggested that the definition be limited to reports containing material information at a level of detail that amounts to ''a call to action to the customer,'' or that could have a price impact on the market for a particular product. NFA also argued that the definition should include an exception for general market commentary, similar to NASD Rule 2711. Newedge USA LLC (Newedge) also argued that the definition in proposed § 1.71(a)(9) was too broad, because any discussion of a derivative that references the underlying physical commodity or financial instrument could be deemed to provide ''information reasonably sufficient upon which to base a decision to enter into a derivatives transaction.'' Newedge contended that the definition of research report should be restricted to ''any written communication * * * including an analysis of the price/market for any specific derivative contract, and that provides information reasonably sufficient upon which to base a decision to enter into a transaction involving such specific derivative contract.''

ADM Investor Services Inc. commented on the differences between daily research reports and weekly and monthly research reports, arguing that proposed § 1.71(a)(9) unnecessarily threatened existing industry practices, particularly with respect to opening and closing comments or intraday market comments by IBs, which do not consist of detailed research but could be covered by the proposed definition of ''research report.''

Having considered the comments, the Commission has determined it appropriate to modify the exclusions to the definitions of ''research report,'' as that term was proposed in the SD/MSP and FCM/IB Conflicts NPRMs. Specifically, the Commission agrees with FIA/ISDA/SIFMA's recommendation that ''commentaries on economic, political, or market conditions'' and ''statistical summaries of multiple companies' financial data, including listings of current ratings'' should be excluded from the definitions of research report. With regard to the exclusion for commentaries on economic or market conditions, the Commission believes that there are distinguishing characteristics between research reports setting forth factual statements about the market for specific derivatives and commentaries that provide opinion on general economic, political, or market conditions. Accordingly, the Commission has modified the rules to incorporate those two exclusions into the definitions of ''research report.''

However, the Commission does not believe that other types of communications should be excluded from the definitions, because they could represent the core focus of a research department doing research on behalf of an SD, MSP, FCM, or IB, e.g., asset

classes, economic variables commonly referenced in derivatives, and on-the-run swap rates. Adopting the NASD 2711 exclusion for analysis concerning economic variables (e.g. rates, inflation) that are commonly referenced in derivatives, would create an exception that would swallow the rule. For example, research conducted on trends in the interest rate, gold, or oil markets are inextricably linked to the swap markets that reference those underlying assets or rate.

The Commission believes that the changes adopted herein will increase consistency with NASD Rule 2711, which was promulgated pursuant to section 15D of the Securities Exchange Act. The Commission believes that the rules, in final form, provide SDs, MSPs, FCMs, and IBs with sufficient flexibility concerning solicitation materials generated by the trading unit, given the exclusion from coverage of ''[a]ny communication generated by an employee of the business trading unit that is conveyed as a solicitation for entering into a derivatives transaction, and is conspicuously identified as such.'' [24]

5. Policies and Procedures—§ 23.605(b)

As proposed, § 23.605(b) required each SD and MSP to ''adopt and implement written policies and procedures reasonably designed to ensure that the [SD] or [MSP] and its employees comply with the provisions of this rule.'' Chris Barnard commented that the prevention of SDs and MSPs from engaging in activities with actual, perceived, or potential conflicts of interest will improve transparency and confidence in the markets, and will reduce risk. The Commission acknowledges the comment and is adopting § 23.605(b) without revision.

6. Research Analysts and Research Reports—§ 23.605(c), § 1.71(c)

a. Separation of Research Analysts From Business Trading Unit and Clearing Unit—§ 23.605(c)(1)

Proposed §§ 23.605 and 1.71 prescribed certain restrictions on the relationship between the research department and all non-research personnel. Such restrictions included limitations on influencing the content of research reports, the supervision of research analysts, and the review or approval of research reports.

With regard to this proposed rule, MFA suggested that the Commission provide additional clarity on the proposed rule by further describing the bright lines of separation between the research department and non-research personnel. For example, the commenter queried whether an SD may house its research department and trading department in the same building or on the same floor, and whether different key cards for entry into each department are required by the rule. Additionally, BlackRock commented that the Commission ''should explicitly exempt entities whose research personnel produce reports for internal use only.''

After reviewing the comments, the Commission believes that the comments raised by the commenters may best be addressed through clarification of the underlying intent of the rule. Accordingly, the Commission has determined it appropriate to adopt the rule as it was originally proposed. First, with respect to MFA's comments, the rule does not expressly require physical separation of the research department and all non-research personnel; however, such separation will be considered by the Commission to be a good practice by registrants in order to minimize the risk of violating the rule. Second, with respect to BlackRock's comments, the Commission believes that the issue of internal research reports is adequately addressed by proposed § 23.605(a)(9)(iv), which excluded from the definition of ''research report'' any ''internal communications that are not given to current or prospective customers.'' [25]

b. Conflicts of Interest Adequately Addressed by Existing Commission and NFA Rules

Proposed § 1.71 did not discuss the issue of whether existing Commission and NFA rules adequately address the directives set forth in section 4d(c) of the CEA as amended by section 732 of the Dodd-Frank Act. Nonetheless, the Commission received comments that raised the issue.

NFA commented that certain of its existing rules address issues raised in the Commission's rule proposal, and that the specific requirements related to research reports that may not be directly applicable to derivatives could have unintended consequences. K&L Gates LLP (on behalf of Peregrine Financial Group Inc.), ADM Investor Services Inc., John Stewart & Associates Inc., and Stewart-Peterson Group Inc. each argued that the issues addressed by the proposed rule are already addressed through existing rules.

Swaps and Derivatives Market Association commented that the proposed rules should be adopted as they were originally proposed.

After considering the comments, the Commission has determined it appropriate to adopt the rule, as it was originally proposed, on this issue. Although certain Commission and NFA rules tangentially address the issues set forth in the proposed rule, section 732 of the Dodd-Frank Act directed the Commission to take certain actions beyond the requirements previously promulgated in the rules of the Commission and NFA. Further, given the similarities between section 4d(c) of the CEA as amended by section 732 of the Dodd-Frank Act, and section 15D of the Securities Exchange Act of 1934, the Commission believes that it is important to provide a measure of specificity with respect to the conflict-of-interest policies and procedures mandated under section 4d(c) and § 1.71. Such specificity will promote consistency in the marketplace. Further, by maintaining consistency—to the extent warranted—with NASD Rule 2711, the Commission believes that the proposed rule will minimize disruption to the marketplace, given that such standards are well-established in the financial industry.

c. Treatment of Small IBs

As proposed, § 1.71 did not establish a separate standard for small IBs. However, in the preamble of the proposed rule, the Commission expressly invited comment on how these rules should apply to FCMs and IBs, considering the varying size and scope of the operations of such firms. The preamble noted, as an example of how the rule could be adjusted to account for firms of different sizes, that NASD Rule 2711(k) provides an exception from certain requirements for 'small firms,' defined to include those firms that over the past three years have participated in ten or fewer investment banking services transactions and generated $5 million or less in gross investment banking services revenues from those transactions. The Commission solicited comment on whether a similar approach should be adopted for small FCMs and IBs. Moreover, the exceptions to the definition of research report were designed to address issues typically found in smaller firms where individuals in the trading unit perform

[24] The Commission notes that SD and MSP communications with counterparties and potential counterparties are addressed in the Commission's external business conduct standards rules. *See* Subpart H of Part 23 of the Commission's Regulations, Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734 (Feb. 17, 2012).

[25] This language is being adopted by the Commission as proposed; however, the provision has been renumbered as § 23.605(a)(9)(vi).

their own research to advise their clients or potential clients.

Several commenters suggested that small IBs should be excepted from the proposed rule. NFA argued that the proposed rule effectively could prohibit the business model of a number of firms that provide an important service to the industry, particularly with respect to agriculture. The commenter suggested that, in adopting an exception for small IBs, the Commission could consider the following factors: A firm's gross annual revenue, number of associated persons, number of annual futures transactions, and nature of the customer base. National Introducing Brokers Association, ADM Investor Services Inc., John Stewart & Associates Inc., and Stewart-Peterson Group Inc. each argued that implementing the proposed rules would be prohibitively costly, burdensome, and unnecessary for small IBs, particularly for IBs dealing with agricultural commodities, and would force small IBs out of business. Chris Barnard noted that small IBs lack the capacity to carry the proportionately heavier regulatory burden set forth in the proposed rule, and as such, some regulatory mitigation would be beneficial, based on number of staff or revenues. Multiple commenters also commented on the limited market price impact of research reports created or distributed by small IBs, as well as the potential that the normal duties of associated persons may be deemed to be research activities for purposes of the rule.

The Commission recognizes and agrees with certain concerns raised by the commenters. Thus, upon review of the comments, the Commission is adopting a separate regulatory standard for small IBs, reflecting the alternative set forth in the preamble of the proposed rule. Section 4d(c) of the CEA mandates the establishment of ''appropriate informational partitions'' within FCMs and IBs, and all such firms are bound by that statutory requirement. However, the Commission recognizes that the size of an IB plays a significant role in determining the appropriateness of such partitions. Accordingly, the rule, in its final form, establishes a separate standard for any IB that has generated, over the preceding 3 years, $5 million or less in aggregate gross revenues from its activities as an IB. This standard is similar to language in NASD Rule 2711 that was raised expressly as a possible alternative in the preamble of the proposed rule.

For any IB meeting those financial requirements, § 1.71(c) of the rule would not apply. Further, § 1.71(b) has been changed to set forth a separate policies and procedures requirement for small IBs. The recommended language of new § 1.71(b)(2) largely mirrors the statutory requirement of section 4d(c). However, the Commission believes that small IBs should be subject to § 1.71(e) (policies and procedures mandating disclosure of material incentives and conflicts of interest) and § 1.71(f) (recordkeeping and reporting).[26] The Commission believes that these changes to the rule, as originally proposed, will address the concerns raised by the commenters and limit the cost burden imposed on small IBs.

Finally, the Commission notes that commentaries on market conditions have been excluded from the definition of ''research report,'' as discussed above.

d. Insider Trading and Futures Markets

Proposed § 1.71 did not address insider trading in the futures markets, or how that issue impacts the implementation of section 732 of the Dodd-Frank Act. Nonetheless, the Commission received comments on the issue. Specifically, K&L Gates LLP (on behalf of Peregrine Financial Group Inc.), John Stewart & Associates Inc., ADM Investor Services Inc., and Stewart-Peterson Group Inc. each argued that the proposed rules inappropriately relied upon established rules in the securities industry, claiming that no ban on insider trading exists in the futures industry. Further, ADM Investor Services Inc. and Stewart-Peterson Group Inc. each contended that only the publication of a U.S. Department of Agriculture market report could have a dramatic effect on the futures market.

Having considered the comments, the Commission has determined not to modify the rule on this issue. Section 732 of the Dodd-Frank Act directed the Commission to take actions concerning conflict-of-interest policies and procedures, and in that provision, Congress included language previously included in section 15D of the Securities Exchange Act of 1934. Section 15D directed that regulatory language be promulgated to implement that statute, and those regulatory standards are now well-established in the financial industry. Given the similarities in statutory language, coupled with the well-established principles set forth in NASD Rule 2711, the Commission believes that it is important to provide a measure of specificity with respect to the conflict-of-interest policies and procedures mandated under section 4d(c) and the proposed rule. Such specificity will promote consistency and certainty in the marketplace. Further, by maintaining consistency—to the extent warranted—the Commission believes that the final rule will minimize disruption to the marketplace.

e. Exception for FCMs If Engaged in Only a *de minimis* Amount of Proprietary Trading

Proposed § 1.71 did not set forth a de minimis exception for FCMs. Nonetheless, the Commission received a comment from Newedge, which argued that FCMs engaging in minimal proprietary trading should not be subject to the provisions relating to research analysts. The commenter stated that the proposed rule would impose unnecessary burdens, and that a firm that engages in only limited proprietary trading does not present a risk of conflicts of interest.

Having considered the comment, the Commission does not believe it appropriate to modify the proposed rule on this issue. The imposition of a de minimus exception to the conflicts rule is inconsistent with the statutory directive that Congress set forth in section 732 of the Dodd-Frank Act, which does not distinguish between proprietary trading and trading for the accounts of customers. Moreover, the limited nature of a firm's proprietary trading does not serve to negate the issues intended to be addressed through the statutory mandate.

f. Lack of Examples of Research-Related Conflicts of Interest in the Futures Industry

Proposed § 1.71 did not cite specific examples of conflicts of interest in the futures industry, nor did it discuss the prevalence of conflicts in the industry. Nonetheless, the Commission received comments relating to those issues. K&L Gates LLP (on behalf of Peregrine Financial Group Inc.) commented that the Commission failed to cite any evidence of conflicts of interest arising from the publication of research reports. NFA commented that it had issued guidance prohibiting a FCM or IB from trading in a security futures product in anticipation of the issuance of a related research report, but that the commenter was unaware of any instances of conflicts of interest in research reports of security futures products. Further, Senator Carl Levin commented that the Commission should encourage compliance by developing examples of potential or actual conflicts of interest that should be disclosed to investors.

After considering the comments, the Commission has decided not to modify

[26] The provisions of § 1.71(d) are applicable only to FCMs.

the proposed rule on this issue. Section 732 of the Dodd-Frank Act directed the Commission to take certain actions concerning conflict-of-interest policies and procedures. Specifically, as noted in the preamble of proposed § 1.71, section 732 ''requires, in relevant part, that FCMs and IBs implement conflicts of interest systems and procedures that 'establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons.''' This statutory language draws heavily from section 15D of the Securities Exchange Act, which was established through the Sarbanes-Oxley Act of 2002. The Commission believes that the provisions of the proposed rule relating to conflicts of interest represent a prudent implementation of the statutory directive.

As noted above, the regulatory requirements promulgated pursuant to section 15D—which are similar to the requirements contained in the rule—are now well-established in the financial industry. Given the similarities in statutory language, coupled with the well-established principles set forth in NASD Rule 2711, the Commission believes that the proposed rule will promote consistency and certainty, while minimizing disruption, in the marketplace. With respect to Senator Levin's recommendation that the Commission should develop examples of potential or actual conflicts of interest, the Commission notes the many examples cited in Senator Levin's comment letter,[27] but declines to provide additional examples so as not to pre-judge the scope of possible future enforcement actions.

g. Restriction on Non-Research Personnel From ''Influencing the Content'' of Research Reports—§ 23.605(c)(1)(i), § 1.71(c)(1)(i)

The proposed rule provided that ''[n]onresearch personnel shall not influence the content of a research report of the [SD, MSP, FCM, or IB].''

NFA commented that non-research personnel should be allowed to influence the content of a research report under certain circumstances and, further, that paragraph (i) should be eliminated from proposed § 1.71(c)(1). FIA, ISDA, and SIFMA, in a joint comment, argued that the proposed prohibition on ''influencing the content'' should be eliminated because it would impair ordinary communications between research and non-research personnel. As an alternative, FIA/ISDA/SIFMA suggested that non-research personnel should be prohibited only from ''directing the views and opinions expressed in research reports.'' In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

Better Markets commented that the Commission should clarify and further restrict the communications covered by the provisions. Specifically, Better Markets argued that § 23.605 and § 1.71 should be expanded not only to prohibit non-research personnel from influencing the content of a research report or any decision to publish a research report, but also any decision not to publish a report or to refrain from including relevant information.

Upon consideration of the comments, the Commission agrees with the suggestions raised by both FIA/ISDA/SIFMA and Better Markets and is incorporating the suggestions into the final rules. Specifically, the Commission is modifying both proposed rules to remove the phrase ''shall not influence the content of a research report'' and replacing it with the phrase ''shall not direct a research analyst's decision to publish a research report of the [SD, MSP, FCM, or IB], and non-research personnel shall not direct the views and opinions expressed in a research report'' The Commission believes that the changes accommodate the concerns raised by the commenters while still reflecting the intent of the proposed rules.

h. Restriction on Research Analyst Supervision by Business Trading Unit or Clearing Unit—§ 23.605(c)(1)(ii), § 1.71(c)(1)(ii)

The proposed rules provided that ''[n]o research analyst may be subject to the supervision or control of any employee of the [SD's, MSP's, FCM's, or IB's] business trading unit or clearing unit, and no personnel engaged in pricing, trading or clearing activities may have any influence or control over the evaluation or compensation of a research analyst.''

FIA, ISDA, and SIFMA, in a joint comment, suggested that the Commission limit the scope of the rules, whereby employees of business trading and clearing units would be prohibited only from acting as direct supervisors of research analysts. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

Upon reviewing the comment, the Commission has decided not to change the language of the proposed rules in the manner suggested by the commenter. Any influence on research analysts by non-research senior management responsible for pricing, trading, or clearing activities would undermine the conflict-of-interest requirements mandated by new sections 4d(c) and 4s(j)(5) of the CEA and set forth in the rules. However, the Commission has determined it appropriate to clarify the language of the rules, as they had been originally proposed, by using the defined terms ''business trading unit'' and ''clearing unit'' to designate those personnel who may not have influence or control over the evaluation or compensation of a research analyst.

i. Trading Ahead of Research Report Publication

Proposed § 1.71 did not expressly impose restrictions against trading ahead of the publication of a research report. Senator Carl Levin commented that the Commission should add provisions akin to FINRA Rule 5280 (Trading Ahead of Research Reports) in order to improve the quality of research reports and the integrity of the marketplace. The Commission observes that it did not propose a trading ahead prohibition in its original proposals. However, the Commission believes that the restrictions on communications already included in the rules will minimize the opportunities for such activities to take place.[28] Moreover, the Commission will continue to monitor

[27] *See, e.g.,* SEC Fact Sheet on Global Analyst Research Settlements, SEC (Apr. 28, 2003), available at *http://www.sec.gov/news/speech/factsheet.htm;* Hans G. Heidle and Xi Li, Is There Evidence of Front-Running Before Analyst Recommendations? An Analysis of the Quoting Behavior of Nasdaq Market Makers, Nov. 10, 2003, available at *http://www.afajof.org;* Joint Report by NASD and the NYSE On the Operation and Effectiveness of the Research Analyst Conflict of Interest Rules (Dec. 2005), available at *http://www.finra.org/Industry/Issues/ResearchAnalystRules/.*

[28] The Commission also notes that depending on the facts and circumstances, improperly trading ahead or front running counterparty orders may constitute fraudulent, deceptive or manipulative conduct under sections 4b and 6(c)(1) of the CEA, and § 180.1 of Commission regulations, among other fraudulent, deceptive, and manipulative practices protections under the CEA and Commission regulations.

this issue and may incorporate such a restriction in a future rulemaking.

j. Requirement That Legal/Compliance Personnel Supervise Communication Between Research and Non-Research Personnel—§ 23.605(c)(1)(iv)

The proposed rule permitted non-research personnel to review a research report before its publication ''as necessary only to verify the factual accuracy of information in the research report, to provide for non-substantive editing, to format the layout or style of the research report, or to identify any potential conflicts of interest.'' However, such review (1) may only be conducted through authorized legal or compliance personnel, and (2) must be properly documented.

EEI commented that the Commission should exempt communications that are factual in nature from oversight by legal and compliance personnel, positing that coverage of such communications would hinder unnecessarily the development of research reports and unnecessarily burden legal/compliance personnel.

After considering the comment, the Commission has decided to promulgate the rule as it was originally proposed. The Commission believes that involvement by legal or compliance personnel in such communications will reduce significantly the risk that non-research personnel will act in an unlawful manner, inadvertently or otherwise.

k. Restrictions on Research Analyst Communications—§ 23.605(c)(2), § 1.71(c)(2)

The proposed rules provided that ''[a]ny written or oral communication by a research analyst to a current or prospective counterparty, or to any employee of the [SD, MSP, FCM, or IB], relating to any derivative must not omit any material fact or qualification that would cause the communication to be misleading to a reasonable person.''

FIA, ISDA, and SIFMA, in a joint comment, argued that the proposed rule would burden an affected firm's operations—especially firms with foreign offices—and suggested that internal communications within a firm should be exempt from the material facts or qualifications required to be communicated to prospective and current customers. FIA/ISDA/SIFMA further noted that neither NASD Rule 2210 nor similar SRO rules contain equivalent restrictions, and that firms should be permitted to consider the nature of the audience when assessing whether a particular communication is misleading. FIA/ISDA/SIFMA also argued that the phrase ''or to any employee'' should be struck from proposed §§ 23.605(c)(2) and 1.71(c)(2). In a separate comment, JP Morgan expressed general agreement with the points raised in the FIA/ISDA/SIFMA letter.

Upon review of the comments, the Commission has determined it appropriate to change the rules to eliminate restrictions on communications to employees of an SD, MSP, FCM, or IB. The Commission believes that by deleting the phrase ''or to any employee of the [SD, MSP, FCM, or IB],'' the cost concerns implicated by requiring registrants to monitor internal communications will be addressed without producing a materially adverse impact on the effectiveness of the rules. To the extent that commenters stated that firms should be permitted to consider the nature of the audience when assessing whether a particular communication is misleading, the Commission notes that such matters will be governed by the Commission's existing anti-fraud standards.

l. Restriction on Influence of Business Trading Unit and Clearing Unit on Research Analyst Compensation—§ 23.605(c)(3), § 1.71(c)(3)

Proposed §§ 23.605(c)(3) and 1.71(c)(3) provided that an SD, MSP, FCM, or IB ''may not consider as a factor in reviewing or approving a research analyst's compensation his or her contributions to the [SD's, MSP's, FCM's, or IB's] trading or clearing business'' and that ''[n]o employee of the business trading unit or clearing unit of the [SD, MSP, FCM, or IB] may influence the review or approval of a research analyst's compensation.''

FIA, ISDA, and SIFMA, in a joint comment, contended that research management should be able to solicit input from business trading and clearing unit personnel, particularly as non-research personnel may be in a better position to receive feedback from clients concerning the performance of research personnel. FIA/ISDA/SIFMA suggested that the Commission exempt from §§ 23.605(c)(1)(ii) and 1.71(c)(1)(ii) any personnel who occupy non-trading or non-clearing positions, and who are not employed in the business trading or clearing units. FIA/ISDA/SIFMA, as well as Newedge, further argued that research management decisions concerning the performance evaluation of research analysts should be subject to firm-wide compensation guidelines, as long as they are non-discriminatory and non-prejudicial. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter. Newedge complained of a lack of clarity as to which personnel of a firm engaged exclusively or substantially in clearing activities, and not proprietary trading, would be available to supervise and evaluate research analysts. Newedge also argues that senior officers and employees of departments other than business trading and clearing units should be allowed to have input on compensation decisions.

Michael Greenberger argued that research management should be prohibited from soliciting any input of business trading and clearing units concerning a research analyst's compensation or performance evaluation, even if the influence is indirect or if research management maintains the ability to make all final decisions on such determinations. Better Markets commented that the provision should be broadened. For example, Better Markets argued that a research analyst's contribution to the trading business of an affiliate should be prohibited from being considered when determining compensation. The commenter further noted that, in addition to prohibiting a research analyst's contributions to the trading business from being considered in respect of an analyst's compensation, ''consideration of adverse effects on such trading business'' must be also prohibited from being considered.

After considering the comments, the Commission has determined it appropriate to change the language as set forth in the original proposal. As revised, the rules permit personnel of a business trading unit or clearing unit to forward communications by a client or customer to research department management, to the extent that such communications relate to feedback, ratings, and other indicators of a research analyst's performance provided by the client or customer. The Commission believes that the change will address certain concerns raised by FIA/ISDA/SIFMA and Newedge while not detracting from the policy goals underlying the provision. Beyond that change, the Commission has decided not to modify further the language that was originally proposed. Maintaining a firewall around research analyst compensation decisions is crucial to implementing effective conflict-of-interest policies and procedures. Nonetheless, to address an issue raised by FIA/ISDA/SIFMA, the Commission wishes to clarify the intent of the rule. Specifically, the rule is not intended to prohibit management decisions concerning the performance evaluation of research analysts from being subject

to firm-wide compensation guidelines, as long as they are non-discriminatory and non-prejudicial.

m. Relevance of a Promise of Favorable Research to Futures Market—§ 1.71(c)(4)

As proposed, § 1.71(c)(4) prohibits an FCM or IB from ''directly or indirectly offer[ing] favorable research, or threaten[ing] to change research, to an existing or prospective customer as consideration or inducement for the receipt of business or compensation.'' K&L Gates LLP (on behalf of Peregrine Financial Group Inc.) commented that the provision may be relevant in the context of research on a particular company, but it has no relevance in terms of a report on soybeans or the Euro.

After reviewing the comment, the Commission has decided not to modify the proposed rule on this issue. The Commission believes that the provision appropriately addresses the statutory directive and is an important component of firewall protection. Moreover, inclusion of this provision will maintain consistency with the conflict-of-interest provisions proposed for SDs and MSPs.

n. Disclosure of Conflicts by Research Analysts in Research Reports and Public Appearances—§ 23.605(c)(5), § 1.71(c)(5)

Proposed §§ 23.605(c)(5)(i) and 1.71(c)(5)(i) required that an SD, MSP, FCM, or IB ''disclose in research reports and a research analyst must disclose in public appearances: (1) Whether the research analyst maintains, from time to time, a financial interest in any derivative of a type that the research analyst follows, and the general nature of the financial interest; and (2) any other actual, material conflicts of interest of the research analyst or [SD, MSP, FCM, or IB] of which the research analyst has knowledge at the time of publication of the research report or at the time of the public appearance.''

FIA, ISDA, and SIFMA, in a joint comment, argued that §§ 23.605(c)(5)(i) and 1.71(c)(5)(i) should be limited to disclosing whether a research analyst maintains a relevant financial interest ''at the time of publication of the report/time of public appearance,'' rather than the phrase ''from time to time.'' FIA/ISDA/SIFMA also contended that the phrase ''any other actual, material conflict of interest of the research analyst'' is vague and would be burdensome to implement, requiring coordination among various business units and the creation of special databases in order to comply with the rule. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter. NFA also commented on the difficulty for FCMs to remain current on an analyst's financial interests, and that the Commission should clarify that the term ''of a type that the research analyst follows'' (§ 1.71(c)(5)(i)) refers to interest rate swaps, credit swaps, equity swaps, and other commodity swaps, consistent with the characterization of swaps set forth in the Commission's proposed product definitions.

Senator Carl Levin commented that the Commission should use this rule not only to ensure the integrity of research reports, but also to impose a broader duty on FCMs and IBs to more completely disclose any adverse interest. The commenter suggested that the rule should prohibit firms from betting on the failure of instruments they designed and sold to customers.

EEI suggested that the Commission modify the proposed rule to provide a de minimis exception from the research analyst financial interest disclosure requirements, and that a research analyst should be required only to identify relevant financial interests.

Upon review of the comments, the Commission is modifying the language of §§ 23.605(c)(5) and 1.71(c)(5) to remove the phrase ''from time to time.'' The Commission believes that this change will address the issue raised by FIA/ISDA/SIFMA. However, the Commission has determined that a de minimus exception would be inappropriate given the difficulty of deciding when a financial interest is de minimis in this context. Further, the Commission believes that the cost concerns of FIA/ISDA/SIFMA are misplaced. The rules require disclosure of ''any other actual, material conflicts of interest of the research analyst or [SD or MSP] of which the research analyst *has knowledge* at the time of publication of the research report or at the time of the public appearance'' (emphasis added).[29] Thus, the disclosure requirement is limited to conflicts of which the research analyst has knowledge, and the SD, MSP, FCM, or IB need not construct the databases suggested by FIA/ISDA/SIFMA in order to comply with the rule.

[29] The Commission notes that in an action brought for failure to disclose a material conflict of interest of an SD or MSP in a research report or public appearance, the onus will be on the SD or MSP to show that they had policies and procedures reasonably designed to ensure that the research analyst had no knowledge of the material conflict of interest of the SD or MSP.

o. Disclosure of Conflicts in Third-Party Research Reports—§ 23.605(c)(5)(iv), § 1.71(c)(5)(iv)

As proposed, §§ 23.605(c)(5)(iv) and 1.71(c)(5)(iv) required that if an SD, MSP, FCM, or IB distributes or makes available third-party research reports, each report must be accompanied by certain disclosures or an internet link to the appropriate disclosures, subject to certain conditions and qualifications.

EEI argued that the required disclosures are unnecessary because third-parties are, by definition, independent of an SD or MSP. FIA, ISDA, and SIFMA, in a joint comment, stated that it was unclear what disclosures must be made in connection with the distribution of independent third-party research reports, given that, by definition, the SD, MSP, FCM, or IB has no role in the content or creation of an ''independent third-party research report.'' In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

Upon review of the comments, the Commission is adopting the rule as proposed. Third-party research reports provided by a registrant may be interpreted by recipients as carrying the endorsement of the registrant and may present conflicts-of-interest issues in the same way as research reports originating with the registrant's own research analysts. The Commission believes that the disclosures will afford recipients with a clear understanding of conflicts posed by a particular report.

p. Application of Proposed Research Conflicts Rules to Research Reports Covering Derivatives and Securities

The proposed rules and accompanying preambles did not address how the proposed requirements would apply to research reports that contain information that is subject to the rule and information that is securities-related.

FIA, ISDA, and SIFMA, in a joint comment, questioned how § 23.605 and § 1.71 would apply to a research report that addresses multiple products (i.e., both derivatives and securities), or to a report discussing a product that may be a derivative, security, or both. FIA/ISDA/SIFMA suggested that only the derivatives section of a report discussing securities and derivatives should be subject to the proposed regulations. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

Upon review of the comments, the Commission has decided not to change

the language that was originally proposed. To the extent that securities underlie the derivatives discussed in the report, or to the extent that securities are otherwise intertwined with the discussion of derivatives, the Commission believes that any such discussion of securities should be subject to the Commission's rules. SDs, MSPs, FCMs, and IBs will be registered with the Commission, and the swaps and futures in which they transact will be within the Commission's jurisdiction. Because the value of each swap and future intrinsically may be based on the value of one or more underlying instruments, research reports by SDs, MSPs, FCMs, or IBs that analyze such underlying instruments should be addressed by the conflict-of-interest policies and procedures mandated under sections 4d(c) and 4s(j)(5) of the CEA.

q. Application of Proposed Research Conflicts Rules to Research Analysts Covering Derivatives and Securities

The proposed rules and accompanying preambles did not address how the proposed requirements would apply to research analysts that work with derivatives subject to the Commission's rules and securities subject to rules promulgated by the SEC or FINRA.

FIA, ISDA, and SIFMA, in a joint comment, queried how the rule would apply to research analysts registered with both futures and securities regulators. FIA/ISDA/SIFMA suggested that the Commission confirm that individuals subject to both § 23.605 or § 1.71 and securities regulations must only comply with § 23.605 or § 1.71 when acting in the capacity as a ''research analyst,'' as defined by § 23.605 or § 1.71. FIA/ISDA/SIFMA also raised concerns with respect to inconsistencies between §§ 23.605 and 1.71 and other rules promulgated in the securities or futures context. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

Having considered the comments, the Commission confirms that individuals subject to both § 23.605 or § 1.71 and securities regulations must only comply with § 23.605 or § 1.71 when acting in the capacity of a ''research analyst,'' as defined by § 23.605 or § 1.71. SDs, MSPs, FCMs, and IBs will be registered with the Commission, and the swaps and futures in which they transact will be within the Commission's jurisdiction. Because the value of each swap and future intrinsically may be based on the value of one or more underlying instruments, research reports by SDs, MSPs, FCMs, and IBs analyzing such underlying instruments should be addressed by the conflict-of-interest policies and procedures mandated by new sections 4d(c) and 4s(j)(5) of the CEA.

7. Clearing Activities—§ 23.605(d), § 1.71(d)

a. Separation of Clearing Unit From Business Trading Unit—§ 23.605(d)(1) and (2); Separation of Business Trading Unit and Clearing Unit—§ 1.71(d)(1) and (2)

As proposed, § 23.605(d)(1) provided that ''[n]o [SD] or [MSP] shall directly or indirectly interfere with or attempt to influence the decision of any affiliated clearing member of a [DCO] with regard to the provision of clearing services and activities,'' while proposed § 1.71(d)(1) congruently provided that ''[n]o [FCM] shall permit any affiliated [SD] or [MSP] to directly or indirectly interfere with, or attempt to influence, the decision of the clearing unit personnel of the [FCM] with regard to the provision of clearing services and activities. * * *''

Likewise, proposed § 23.605(d)(2) provided that ''[e]ach [SD and MSP] shall create and maintain an appropriate informational partition, as specified in section 4s(j)(5)(A) of the Act, between business trading units of the [SD or MSP] and clearing member personnel of any affiliated clearing member of a [DCO],'' while proposed § 1.71(d)(2) congruently provided that ''[e]ach [FCM] shall create and maintain an appropriate informational partition between business trading units of an affiliated [SD] or [MSP] and clearing unit personnel of the [FCM].''

MFA commented that it supports the prohibition of SDs and MSPs from directly or indirectly interfering with, or attempting to influence, the decision of any affiliated clearing member of a DCO with regard to clearing services and activities, as well as the informational partitions between business trading personnel and personnel of an affiliated clearing member. Pierpont Securities Holdings LLC also supported the Commission's proposals, contending that the informational partitions between a business trading unit and a clearing unit within a large financial institution must be established and maintained as to all personnel, not just supervisory personnel, and the penalties for violating those restrictions must be meaningful.

Swaps and Derivatives Market Association filed two comments on these rules, both of which were supportive of the proposals. In the first comment, the commenter argued that the proposed separation of trading and clearing units in § 23.605(d) should be expanded so as to require ''distant physical separation'' of the two. The commenter also expressed support for requiring the use of objective criteria in determining whether to accept clearing customers. In the second letter, the commenter contended that the restrictions set forth in § 23.605(d), as proposed, correctly address key areas where conflicts arise, and that the independence of clearing members is essential to accomplish several policy goals of the Dodd-Frank Act. In the second comment, the commenter stated its belief that the firewalls mandated by the proposed rules ''are critical to reducing potential conflicts between the trading unit of an FCM, IB, SD, or MSP and their clearing unit.''

Michael Greenberger also expressed support for § 23.605(d), as proposed, noting that attempts to tie clearing decisions to trade execution decisions would raise potential conflicts of interest, which could serve to block access to clearing and prevent competition among execution venues. The commenter also noted that mandatory public disclosure of client acceptance criteria by SDs and MSPs is consistent with legislative intent. Likewise, Pierpont Securities Holdings LLC also expressed support for the Commission's proposal, in particular the requirements that no direct or indirect interference or influence be permitted by the business trading unit on the clearing unit as to (i) whether clearing services will be provided and (ii) how clearing fees will be set.

The Principal Traders Group supported a rule preventing interference by the business trading unit of an SD or MSP, with respect to the decision of an affiliated FCM to accept a client for clearing services, but preferred that the rule be presented in the form recommended by FIA/ISDA/SIFMA below.

In contrast, FIA, ISDA, and SIFMA, in a joint comment, commented that the proposed rules would alter the business operations of integrated financial services firms to the detriment of clients and in a manner disproportionate to achieving the regulatory goals the Commission has identified, including the promotion of effective risk management. The commenters also argued that the Commission's proposed application of the conflicts rules to FCM clearing activities is not contemplated by section 732 of the Dodd-Frank Act. FIA/ISDA/SIFMA argued that the proposed rules would impair an SD's/MSP's ability to follow risk management best practices. FIA/ISDA/SIFMA

recommended that the Commission not adopt the proposed rules, but instead adopt a rule that prohibits an affiliated SD or MSP from obtaining information from an affiliated FCM's clearing personnel concerning transactions conducted by FCM clients with either their own clients or with independent SDs or MSPs. FIA/ISDA/SIFMA also expressed support for a rule that would require each FCM's clearing unit to have independent management that makes its own final decisions regarding clients to which it will offer clearing services as well as the terms for those services. FIA/ISDA/SIFMA also suggested that the Commission clarify that the rule does not mandate that firms publicize client sales and on-boarding decisions.

UBS Securities LLC echoed certain points made in the FIA/ISDA/SIFMA comment, particularly with respect to the ability of a financial services firm to operate its swap clearing business as a partnership with its trading business in order to serve clients, while JP Morgan agreed with the FIA/ISDA/SIFMA comment discussed above. JP Morgan also posited that while ''it would be appropriate for the CFTC to issue rules prohibiting any activity intended to restrict open access to clearing, * * * we believe a SD/MSP should be permitted to work and share information with its clearing member affiliate to promote and facilitate a client's access to clearing services or to define the parameters pursuant to which clearing services will be offered.''

The FHLBs argued that the proposed rule goes beyond the standards set forth in the Dodd-Frank Act and that the proposed rule ''overly restricts the ability of [SDs and MSPs] to run their trading and clearing operations and effectively service the needs of their end-user counterparties.'' The proposed rule also could inhibit SDs and MSPs ''from taking prudent, well-informed and timely actions in situations with respect to the closing out of transactions, in a default scenario or otherwise.''

NFA commented that § 1.71(d) is too broad and may negatively impact a firm's ability to share information about customers to make credit and risk determinations. UBS Securities LLC echoed certain of the points made in the FIA/ISDA/SIFMA comment, particularly with respect to the ability of a financial services firm to operate its swap clearing business as a partnership with its trading business in order to serve clients. Newedge commented that the proposed rule would limit firms' ability to coordinate, credit, risk, and other policies, and suggested that rather than prohibiting an affiliated SD or MSP from interfering with a FCM's decision to provide clearing services, § 1.71(d) should prohibit a FCM from permitting business trading unit personnel of an affiliated SD or MSP from interfering with the FCM's decision to provide clearing services.

Commenters have expressed divergent views on this issue, with some commenters strongly favoring the Commission's proposed rules (and, to a certain extent, requesting that the rule be expanded), while others have advocated that the provision not be adopted. Upon consideration of all the comments, the Commission has determined it appropriate to promulgate the rules largely as they were originally proposed. The separation of the FCM clearing unit from the interference or influence of an affiliated SD or MSP is crucial to promoting open access to clearing. Open access to clearing will be essential for the expansion of client clearing needed for market participants to comply with the mandatory clearing of swaps as determined by the Commission under section 723 of the Dodd-Frank Act. The Commission believes that the promulgation of the language as proposed would be ''appropriate,'' as that term is used in section 4d(c) as amended by section 732 of the Dodd-Frank Act. Moreover, the Commission does not believe the rule will hamper risk management. The Commission notes that it has proposed straight-through processing rules,[30] counterparty clearing documentation rules,[31] and clearing member risk management rules [32] that would, if adopted, minimize the counterparty risk to an SD or MSP with respect to transactions required or intended to be cleared.

In response to commenters' concerns about an FCM's ability to manage a default scenario without the benefit of the trading expertise in the business trading unit, the Commission is modifying proposed § 1.71(d)(2)(i) to permit the business trading unit of an affiliated SD or MSP to participate in the activities of an FCM during an event of default. Specifically, the business trading unit personnel would be permitted to participate in the activities of the FCM, as necessary, during any default management undertaken by a derivatives clearing organization that results from an event of default and for the purposes of transferring, liquidating, or hedging any proprietary or customer positions as a result of an event of default.

In addition, the Commission is including the term ''clearing unit,'' as defined in § 23.605(a), in the relevant provisions of § 23.605(d). This change will serve to clarify the scope of the informational partition between the SD or MSP and the personnel or division of a clearing member responsible for the provision of clearing services.

To clarify an issue raised by FIA/ISDA/SIFMA, the Commission notes that SDs and MSPs are not required to publicize their client sales and on-boarding *decisions;* rather, the *criteria* used in making those decisions should be publicly available and objective. In other words, ''all such decisions regarding the acceptance of customers for clearing should be made in accordance with publicly disclosed, objective, written criteria,'' as stated in the preamble of the proposed rule.

b. Division of Clearing Unit Into Self-Clearing Unit and Customer Clearing Unit

The proposed rules did not distinguish between a self-clearing unit (clearing for an SD's or MSP's own trades) and a customer clearing unit (clearing for customers and competitors). However, Swaps and Derivatives Market Association commented that the proposed rules should differentiate between the two units. Having considered that comment, the Commission has decided not to modify the language in the manner suggested by the commenter. The Commission believes that subdividing the clearing unit into two separate sub-units would create an unnecessary complication that could erode the firewall mandated by the statute.

c. Prohibition on Business Unit Personnel of an SD or MSP From Supervising Personnel of an Affiliated DCO-Clearing Member—§ 23.605(d)(2); Restrictions on SD and MSP Business Trading Unit Supervision of Clearing Unit of Affiliated FCM—§ 1.71(d)(2)(ii)

As proposed, § 23.605(d)(2) provided that, at a minimum, the § 23.605(d)(2) informational partitions ''shall require that no employee of a business trading unit of a [SD] or [MSP] shall supervise, control, or influence any employee of a clearing member of a derivatives clearing organization,'' while proposed, § 1.71(d)(2)(ii) congruently provided that ''[n]o employee of a business trading unit of an affiliated [SD] or [MSP] shall supervise, control, or

[30] *See* Requirements for Processing, Clearing, and Transfer of Customer Positions, 76 FR 13101, 13109 (Mar. 10, 2011).

[31] *See* Customer Clearing Documentation and Timing of Acceptance for Clearing, 76 FR 45730, 45737 (Aug. 1, 2011).

[32] *See* Clearing Member Risk Management, 76 FR 45724, 45729 (Aug. 1, 2011).

influence any employee of a clearing unit of the [FCM].''

FIA, ISDA, and SIFMA, in a joint comment, posited that because employees of a business trading unit and a clearing unit may be supervised by the same manager, §§ 23.605(d)(2) and 1.71(d)(2)(ii) should be amended to prohibit an employee of an SD or MSP from acting as a direct supervisor of any non-management personnel of an affiliated FCM's clearing unit. The commenter also suggested that salespeople be permitted to associate with an SD or MSP and with an affiliated FCM, and be permitted to act for clients at both entities. Further, the commenter argued that a carve-out should be added to §§ 23.605(d) and 1.71(d) enabling an SD parent to exercise risk management over its affiliated FCM (e.g., approving credit and risk parameters for common and distinct customers) in a manner that is non-discriminatory, non-prejudicial, and for the sole purpose of complying with group risk and credit policies and parameters. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

After reviewing the comment, the Commission has decided to adopt the rule with certain modifications. Any influence on clearing unit personnel by upper-level supervisors involved in business trading unit activities would undermine the conflict-of-interest requirements mandated by new sections 4d(c) and 4s(j)(5) of the CEA, as amended by sections 731 and 732 of the Dodd-Frank Act, respectively, and set forth in the rule. Moreover, the Commission does not believe that the rule language should be changed to permit sales personnel to act for both the trading unit and the clearing unit. The risks associated with this approach, in terms of potential undue influence and interference with clearing decisions has been well-supported by commenters, as discussed above.

With regard to proposed § 1.71(d), the Commission is making certain changes to clarify the intent of the rule. In particular, § 1.71(d)(1)(vi) is modified to prohibit an affiliated SD or MSP from interfering with or influencing decisions related to setting a particular customer's fees for clearing services based upon criteria that are not generally available and applicable to other customers of the FCM. Additionally, as proposed § 1.71(d)(2)(i) required that the informational partitions between the business trading unit of the affiliated SD or MSP and the clearing unit personnel of the FCM include a prohibition on any business trading unit personnel participating in any way with the provision of clearing services. As modified, the rule clarifies that business trading unit personnel may not condition or tie the provision of trading services to the provision of clearing services or otherwise participate in clearing services by improperly incentivizing or encouraging the use of the affiliated FCM.[33] In addition, as discussed above, business trading unit personnel would be permitted to participate in the activities of the FCM in the event of a default.

8. Undue Influence on Customers—§ 1.71(e)

As proposed, § 1.71(e) mandated that FCMs and IBs ''adopt and implement written policies and procedures that mandate the disclosure to its customers of any material incentives and any material conflicts of interest regarding the decision of a customer as to the trade execution and/or clearing of the derivatives transaction.''

K&L Gates LLP (on behalf of Peregrine Financial Group Inc.) commented that existing Commission regulations already impose risk disclosure requirements on FCMs and IBs, and that the proposed rule inappropriately imports a concept from the securities industry into the futures industry.

Better Markets submitted two comment letters in support of the proposal. In the first comment, the commenter suggested that the rule should extend to the affiliates of an FCM or IB, and that the disclosure should include the nature and amounts of the relevant interests. In the second comment, the commenter suggested that the rule be expanded so that any incentives received by FCMs or SDs in exchange for use of various market infrastructures must be fully disclosed. Swaps and Derivatives Market Association submitted a comment supporting § 1.71(e), as proposed.

Having considered the comments, the Commission has determined it appropriate to adopt the rule as it was originally proposed. The Commission believes that in order to ensure that counterparties are adequately informed of any material incentives or conflicts prior to the execution of a transaction, it is essential that FCMs and IBs be required to adopt and implement written policies and procedures that require the advance disclosure of such conflicts. In addition to addressing issues of customer protection, the policies and procedures will promote consistency with proposed § 23.605(e). Further, to the extent that Better Markets commented that the rule should be expanded to include disclosures of certain incentives received by FCMs and IBs, the Commission believes that the recommendation is beyond the scope of this rule.

9. Undue Influence on Customers—§ 23.605(e)

As proposed, § 23.605(e) mandated that SDs and MSPs ''adopt and implement written policies and procedures that mandate the disclosure to its counterparties of any material incentives and any material conflicts of interest regarding the decision of a counterparty: (1) Whether to execute a derivative on a swap execution facility or designated contract market; or (2) Whether to clear a derivative through a derivatives clearing organization.''

FIA, ISDA, and SIFMA, in a joint comment, noted that the proposed rule overlaps with disclosures proposed by the Commission in a separate notice of proposed rulemaking.[34] The commenter argued that the provision should be narrowed and, alternatively, that the Commission could require SDs and MSPs to provide customers with an annual disclosure document describing potential conflicts that may exist among the firm, its affiliates, clients, and employees. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter.

Better Markets submitted two comment letters addressing the provision at issue. In the first comment, the commenter suggested that the Commission extend the disclosure requirements in several respects. In the second comment, the commenter reiterated its belief that incentives of SDs and MSPs received in exchange for use of various market infrastructures should be fully disclosed. Michael Greenberger, UNITE HERE, and Swaps and Derivatives Market Association each submitted comments supporting § 23.605(e), as proposed.

[33] The Commission generally would not view as ''improper'' making available discounted clearing services in connection with trading activities, provided that the business trading unit personnel comply with applicable prohibitions and restrictions on their interactions with the clearing unit. The Commission emphasizes in this regard that in § 1.71(d)(2), the term ''improperly'' modifies both the term ''incentivizing'' and the term ''encouraging'' and that the term ''otherwise'' is intended to clarify that other ''improper'' activities, similar to conditioning or tying, could be subject to § 1.71(d)(2). Such ''improper'' activities are limited to those that wrongfully interfere with, or attempt to influence, a decision of the affiliated FCM's clearing unit personnel specified in § 1.71(d)(1).

[34] See Business Conduct Standards for SDs and MSPs with Counterparties, 75 FR 80638, 80659 (Dec. 22, 2010).

After considering the comments, the Commission has determined it appropriate to adopt the rule as it was originally proposed. The Commission believes that in order to ensure that counterparties are adequately informed of any material incentives or conflicts prior to the execution of a transaction, it is essential that SDs and MSPs be required to adopt and implement written policies and procedures that require the advance disclosure of such conflicts. In addition to addressing issues of customer protection, the policies and procedures will promote the efficient use of trading facilities and DCOs for swap transactions, by ensuring that counterparties are adequately informed of any material incentives or conflicts of an SD or MSP that could impact the execution and clearing decisions of the counterparty.

N. Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of an FCM, SD, or MSP

Section 4d(d) of the CEA, as added by section 732 of the Dodd-Frank Act, requires that each FCM designate an individual to serve as its chief compliance officer (CCO). Likewise, section 4s(k) of the CEA as added by section 731 of the Dodd-Frank Act requires that each SD and MSP designate an individual to serve as its CCO. The CCO NPRM proposed § 3.3(a) to codify these requirements for FCMs, SDs, and MSPs, and prescribed certain qualifications for the position.

Section 4s(k)(2) of the CEA sets forth certain duties to be performed by a CCO of an SD and MSP, and section 4d(d) of the CEA requires the Commission to promulgate rules concerning the duties of a CCO of an FCM. The CCO NPRM proposed § 3.3(d) to codify the duties set forth in section 4s(k)(2) and applied them uniformly to FCMs, SDs, and MSPs.

Section 4s(k)(3) of the CEA requires that the CCO of an SD or MSP annually prepare and sign a report containing a description of the registrant's compliance with the CEA and regulations promulgated under the CEA, and a description of each policy and procedure of the CCO, including the code of ethics and conflicts of interest policies. Proposed § 3.3([e]) [35] codified this requirement and applied these requirements to CCOs of FCMs as well.

The Commission received 25 comment letters and Commission staff participated in one meeting in response to the CCO NPRM and considered each in formulating the final rules.

1. Identical Rules Applicable to SDs, MSPs, and FCMs

The Commission proposed uniform rules applicable to SDs, MSPs, and FCMs.

Rosenthal Collins Group, LLC (Rosenthal) and Newedge commented that Congress did not intend for CCOs of FCMs to be subject to the same requirements as CCOs for SDs and MSPs, and it is ''overkill'' for CCOs of ''pure'' FCMs to be subject to the same requirements as CCOs of SDs and MSPs. However, Rosenthal conceded that an FCM that is also an SD or MSP should comply with the more stringent requirements.

NFA questioned why there was no explanation of the decision to extend identical requirements to CCOs of FCMs. NFA argued that it is more important to harmonize with FINRA Rule 3010 and FINRA Interpretive Material 3010–1, Rule 3012, and Rule 3130 because 55% of FCMs are also broker-dealers (BDs) registered with the SEC.

The FHLBs commented that they are already subject to Federal Housing Finance Agency (FHFA) regulation, such as internal control systems under 12 CFR 917.6, and requested that the Commission defer to this regime because duplicative regulations will not increase transparency and may cause some limited SDs to leave the business.

Better Markets supported extension of the same duties to FCMs because of their critical role in the market that will expand dramatically with the increased use of clearing. The National Society of Compliance Professionals (NSCP) also supported application of identical CCO requirements to all registrants, provided the NSCP's suggested modifications to the rule were made. The Council of Institutional Investors (CII) commented that extending the same duties to CCOs of FCMs would be comprehensive and consistent, and may help mitigate regulatory uncertainties.

FIA and SIFMA agreed with NSCP that the CCO requirements for SDs, MSPs, and FCMs can be harmonized in an identical regime, provided the suggested changes to the rule are made to bring the rule into harmony with the traditional financial services compliance model. FIA and SIFMA also noted that the more traditional compliance model would be consistent with the approach the Commission took with regard to retail foreign exchange dealers (RFEDs).[36]

With regard to comments that CCOs of FCMs should be subject to different or lesser standards than SDs or MSPs, the Commission notes that FCMs are subject to fiduciary duty standards,[37] and agrees with Better Markets that the role of FCMs likely will grow in importance as client clearing of swaps increases. The Commission also agrees with CII that the Commission has an interest in consistent regulation of its registrants. As discussed below, after considering the comments of NSCP, FIA, SIFMA, and others, the Commission is making a number of changes to the final rule to harmonize the rule to the extent possible with the traditional financial services compliance model. Therefore, the Commission is not promulgating different rules for FCMs. The Commission further notes that whereas the Dodd-Frank Act required that FCMs designate CCOs, the Act did not establish a similar requirement that BDs must designate CCOs under the securities laws. Accordingly, the distinction between treatment of FCMs and BDs has a statutory basis.

In response to comments regarding consistency with RFED and FINRA rules, the Commission believes that the changes to the rule discussed below will broadly harmonize the rule with the standard currently applicable to CCOs of RFEDs and the standards applicable to the CCOs of BDs.

The Commission recognizes that there may be some overlap with FHFA rules for the FHLBs. However, the Commission believes that the two approaches are broadly compatible. For example, the FHFA requires senior management to establish and implement an effective system to track internal control weaknesses and the actions taken to correct them, and to monitor and report to the bank's board on the effectiveness of the internal control system, whereas the Commission's rule requires the CCO to establish, in consultation with the board or the senior officer, procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues, and to have a meeting with the board or senior officer at least once a year. These provisions are compatible if the CCO works in

[35] The proposed regulations misnumbered the subsections of § 3.3 such that two subsections were designated as ''(d).'' To avoid confusion, this release re-designates such sections correctly in brackets.

[36] RFEDs are required to designate a CCO and prepare an annual compliance certification under current Commission regulations. *See* 17 CFR 5.18(j).

[37] *See* Joint Report of the SEC and the CFTC on Harmonization of Regulation at 68 (Oct. 16, 2009), available at *www.cftc.gov/PressRoom/PressReleases/pr5735–09* (discussing relevant case law establishing a fiduciary duty standard for FCMs).

consultation with the senior officer (as permitted under § 3.3 as adopted) to establish a monitoring system. The board would receive the benefit of two views on effectiveness of compliance policies—one from managers who implement the policies, and one from a monitor of the managers, who is the CCO.

2. Harmonization With CCO Rule of the Financial Industry Regulatory Authority (FINRA)

Although the Commission reviewed and considered the existing FINRA rules for BDs' CCOs, the duties and requirements of a CCO under section 4s(k) of the CEA are far more specific than the general policies, procedures, and testing requirements of the FINRA rule. Thus, the proposed rule necessarily differed in both form and substance from the FINRA rule, which was not mandated by statute.

FIA and SIFMA argued that the proposal should be harmonized with existing precedent for compliance models in the financial services industry (such as those applicable to BDs), and that NFA, of which SDs and MSPs will be required to be members, should have primary responsibility for setting compliance standards.

Newedge argued that jointly registered BD–FCMs should be able to apply the requirements of FINRA Rule 3130, which Newedge considers to be better designed, and only comply with the Commission's rules if no comparable provision exists in Rule 3130. Newedge also argued that NFA has extensive experience dealing with FCM CCOs and is best positioned to determine their proper role.

Rosenthal commented that the substantial experience of FINRA and NFA in dealing with conduct and compliance should be relied upon, with FINRA Rule 3130 as a guide.

Market participants [38] in a May 17, 2011 meeting (May Meeting) with Commission staff stated that the Commission's rules differed from FINRA's rules in three main ways: resolution vs. mitigation of conflicts, the term ''ensure compliance'' in the Commission's rules, and whether the CEO or the CCO certifies the annual report. The participants also stated that, without revisions to the proposed rule, they would be required to prepare two annual reports: one for FINRA and one for the Commission.

Having considered these comments, the Commission has determined it is unable to conform the rule fully to match the FINRA standard for CCOs of BDs and still meet the statutory requirements of section 4s(k). However, the Commission believes the purpose of the rule is supplemental to—not contradictory with—the relevant provisions of FINRA Rules 3010, 3012, and 3130.

As explained by commenters, the CCO customarily has acted as an advisor, and has not had the ability to enforce compliance policies by directing staff or making hiring and firing decisions. By way of contrast, new section 4s(k) of the CEA requires that the CCO resolve conflicts of interest, be responsible for administering certain policies and procedures, and ensure compliance with the CEA. While the Commission has attempted to be responsive to the traditional role of compliance officers in the financial services industry, the Commission does not believe that FINRA's rules provide a model that would encompass all of the statutory provisions in section 4s(k). The Commission believes, however, that the changes to the rule discussed below will broadly harmonize the final rule with FINRA standards and allow a CCO of a dual registrant to fulfill the duties required by both rules without undue duplication or contradiction.

Notably, as explained above, the Dodd-Frank Act required that FCMs designate CCOs, whereas the Act did not establish a similar requirement that BDs must designate CCOs under the securities laws. Accordingly, the distinction between treatment of FCMs and BDs has a statutory basis.

3. Regulatory Structure

In the CCO NPRM, the Commission requested comment on whether the structure of the proposed rules allows for sufficient flexibility.

EEI urged the Commission to follow the Federal Energy Regulatory Commission's approach by setting forth principles or attributes of an effective compliance program while leaving the details to the registrant.

Rosenthal argued that the rule should allow for flexibility because the role of a CCO varies, and should not be a ''one size fits all,'' while NSCP commented that the proposed rules ''strike an appropriate balance'' between aspirational standards and forcing all entities to conform to one standard. Cargill commented that if the scope of the rules is limited to a registrant's swap dealing division, the provisions in the proposed rule are ''in general reasonable and provide flexibility so that each swap dealer can apply the general requirements to its own business structure.''

Commodity Markets Council (CMC) requested that the Commission clarify whether registration as an SD due to activities in one commodity would require compliance obligations for all activities of an integrated firm, require compliance obligations on the activities of an involved affiliate, or require compliance obligations for just those activities in the underlying commodity.

NFA and the FHLBs commented that the rules should explicitly permit the CCO to share any other executive role, such as CEO, to provide flexibility for smaller firms. NFA also argued that the rules should recognize that compliance expertise may reside with more than one individual, and thus the Commission should consider allowing an entity to designate multiple CCOs, so that each CCO's primary area of responsibility is defined, and each CCO should be required to perform duties and responsibilities with respect to their defined area. NFA also recommended that CCOs explicitly be permitted to consult with other employees, outside consultants, lawyers, and accountants.

Newedge, Hess Corporation (Hess), and The Working Group argued that affiliated FCM/SD/MSPs that are separate legal entities should be permitted to share the same CCO to increase compliance efficiency. The Working Group also argued that the CCO of affiliated registrants should be allowed to report to a board of an affiliated entity that controls both entities. Better Markets, on the other hand, commented that a senior CCO should have overall responsibility of each affiliated and controlled entity, even if individual entities within the group have CCOs. Better Markets also recommended that the rule require the CCO office to be located remotely from the trading floor.

In response to EEI's recommendation that the Commission set forth general principles akin to those required by FERC, the Commission observes that the statutory regime established by Congress would not permit such an approach.

The Commission agrees with commenters that CCOs should be permitted to ''wear multiple hats.'' In other words, the Commission confirms that a CCO may share additional executive responsibilities and/or be an existing officer within the entity. This is particularly appropriate in smaller firms, which may lack sufficient scale to employ a stand-alone CCO. However, employing a stand-alone CCO may be

[38] Representatives from the SEC and Commission staff met with industry participants including representatives of FIA, SIFMA, UBS Financial Services, Inc., MF Global, Morgan Stanley, JPMorgan Chase & Co., Pershing, Alliance Bernstein, and Newedge USA on May 17, 2011. *See http://comments.cftc.gov/PublicComments/.*

appropriate in a larger firm, depending on the scale of its operations and degree of the CCO's responsibilities. Additionally, the Commission confirms that nothing in the rules would prohibit multiple legal entities from designating the same individual as CCO, but the rule as adopted will require the CCO to report to each entity's board or senior officer, rather than to the board or senior officer of a consolidated corporate parent.

The Commission has determined not to permit designation of multiple CCOs with delineated areas of responsibility because this arrangement would not comply with sections 4d(d) and 4s(k) of the CEA, which require FCMs, SDs, and MSPs to ''designate an individual to serve as chief compliance officer.'' In response to NFA's concern about CCOs being able to rely on the expertise of others, the annual report certification language in the rule as adopted containing the qualifier ''to the best of his or her knowledge and reasonable belief'' would permit the CCO to rely on other experts for statements made in the annual report.

As previously noted, the Commission is clarifying in the final rules that the CCO's duties extend only to the activities of the registrant that are regulated by the Commission, namely, swaps activities of SDs and MSPs and the derivatives activities included in the definition of FCM under section 1(a)(28) of the CEA.

4. Public Availability of the Annual Report

The Working Group commented that it is likely that the annual report will not be considered confidential information protected from Freedom of Information Act requests, and could expose registrants to legal and reputational risk if made public. The Working Group also argued that the report may force firms to make disclosures prior to having remedial actions agreed with the Commission and put into effect, and could grant valuable insight to competitors. The Working Group recommended that the Commission take steps to ensure that the information remains confidential and should make explicit that there is no private right of action for misstatements and inaccurate content in the report. EEI also expressed concern about disclosure of confidential or proprietary information if the report would be made public. FIA and SIFMA recommended that the Commission make the report nonpublic by including it in the list of exempted items in Commission regulation § 145.5.

In response to these comments, the Commission notes that a registrant may request confidential treatment under § 145.9 for information submitted to the Commission under these regulations. Accordingly, an FCM, SD, or MSP must petition for confidential treatment of its annual report under § 145.9 if it wants the Commission to determine that a particular annual report should be subject to confidentiality.

5. Definitions—§ 3.1

Proposed amendments to Part 3 of the Commissions regulations in the CCO NPRM added chief compliance officers to the definition of ''principal'' in § 3.1(a)(1), and added definitions of ''compliance policies'' and ''board of directors'' at § 3.1(g) and (h), respectively.

a. Definition of ''Principal''—§ 3.1(a)(1)

The proposed regulations modified the definition of ''principal'' in Part 3 to include a CCO as an example of a person ''having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission.''

Rosenthal argued that declaring the CCO to be a principal adds no incentive for qualified individuals to become a CCO because he or she could be liable outside his/her area of competence or control. Rosenthal also argued that it should be the firm's responsibility to comply, with ultimate responsibility for compliance placed with the firm's senior management. EEI argued that the proposal is overly prescriptive, that requiring the CCO to be a principal would require significant changes to current practice, and that the reporting structure should be left to each individual firm. On the other hand, Cargill commented that the requirement to be listed as a principal applies statutory disqualification standards that are clear and objective.

NFA recommended that the proposed change to the definition of ''principal'' be modified to mention the CCO earlier in the definition rather than listing the position as an example of a person with supervisory authority over business personnel (i.e., a position with power to exercise a controlling influence). NFA stated that the rule should clarify that the CCO is not a line supervisor, nor does the CCO have supervisory authority over personnel.

FIA and SIFMA argued that, although the FINRA CCO rules require the CCO to register as a ''general securities principal,'' FINRA has explicitly stated that this ''does not create the presumption that a chief compliance officer has supervisory responsibilities or is otherwise a control person.'' FIA and SIFMA recommended that the Commission make a similar qualifying statement when promulgating the final rules.

Considering these comments, the Commission is modifying the proposed rule to list the position of CCO within the definition of principal separately for each type of entity as recommended by NFA, rather than as an example of someone in a position to exercise a controlling influence. The Commission believes that this modification addresses the issue sufficiently, without the need to incorporate the qualifying statement recommended by FIA and SIFMA. However, this change should not be interpreted to undermine the CCO's ability to fulfill the CCO's duties as provided for under the CEA and by Commission regulation.

b. Definition of Compliance Policies—§ 3.1(g)

The proposed regulations defined ''compliance policies'' broadly to include all policies required to be adopted or established by the registrant pursuant to the CEA and regulations, including a code of ethics.

The Working Group requested that the Commission clarify that the proposed rules do not require that a firm must adopt a code of ethics, but only that in its annual report the firm provide a description of a code of ethics to the extent that it has one.

The National Whistleblowers Center (NWC) recommended that the Commission establish a rule that provides contact with internal compliance departments with the same whistleblower protection as contacts with the Commission. NWC also recommended that the Commission require registrants to adopt a code of ethics and conduct that contain rigorous whistleblower protections. Finally, NWC recommended that the Commission require an effective compliance program with the following components: Consistent enforcement of the company's code of conduct; professional management of the help line; vigorous enforcement of non-retaliation policies; effective compliance and ethics risk-assessment; integration of clear, measurable compliance and ethics goals into the registrant's annual plan; direct access and reporting by the CCO to a compliance-savvy board; strong compliance and ethics infrastructure; compliance audits to uncover law-breaking; CEO action to promote compliance; and shared learning within the registrant.

In order to achieve maximum consistency across the CCO provisions for SDs, MSPs, FCMs, DCOs, SDRs, and SEFs, the Commission has deleted the definition of ''compliance policies'' from the rule. The Commission believes this definition is unnecessary given the overall changes to the scope of the review required by the annual report, discussed below. The changes to the scope of the review of the annual report track the language of the statute in that the annual report will require a description of the written policies and procedures, including a code of ethics and conflicts of interest policies. The annual report separately will require a description of material compliance with the CEA and Commission regulations.

In response to The Working Group's comment, the Commission notes that the statute requires that the CCO prepare and sign an annual report that contains a description of each policy and procedure, including the code of ethics and conflicts of interest policies. Whether a firm decides to adopt a separate code of ethics in furtherance of this requirement is left to its discretion.

In response to NWC's comments, the Commission takes note of NWC's points related to whistleblowers as sound practices. However, these additional requirements, such as requiring specific whistleblower provisions in codes of ethics or conduct are outside the scope of this rulemaking.

6. Designation of Chief Compliance Officer—§ 3.3(a)

Proposed § 3.3(a) required each SD, MSP, and FCM to designate an individual as a CCO and provide the CCO with the full responsibility and authority to develop and enforce, in consultation with the board or senior officer, appropriate policies and procedures to fulfill the duties set forth in the CEA and regulations.

EEI argued that a CCO should work in concert with business and control functions to assure appropriate policies are in place, but that the proposed rules go beyond what is required by the CEA by inappropriately imposing upon the CCO full responsibility to develop and enforce all policies. Newedge also commented that CCOs generally do not have full responsibility to develop and enforce compliance policies, and cites a Security Industry Association White Paper that states: ''* * * there is a huge difference between the role of the Compliance Department and its personnel, and the overall broad firm responsibility 'to comply' with applicable rules and regulations. The Compliance Department plays an integral support function for firm compliance programs, but only senior management and business line supervisors ultimately are responsible for ensuring firm compliance with laws and regulations.''

Rosenthal commented that the Commission's rules should be revised in a manner that reflects the view that the CCO is only an advisor to management and should not be viewed as an enforcer of policies within the FCM, as that would represent a ten-year step backward in governance.

In an attempt to balance the traditional role of compliance officers in the financial service industry with the statutory requirements and policy objectives of promoting a strong culture of compliance, the Commission is revising proposed § 3.3(a) to (i) remove the requirement that a CCO be provided with ''full'' responsibility and authority; (ii) remove the requirement that a CCO ''enforce'' policies and procedures; (iii) limit the responsibilities of the CCO to the ''swaps activities'' of SDs and MSPs, and the FCMs' derivatives activities included in the definition of FCM under section 1(a)(28) of the CEA; and (iv) clarify that a CCO need only develop policies and procedures to fulfill the duties set forth in, and ensure compliance with, the CEA and Commission regulations. The Commission is making the changes to § 3.3(a) to alleviate commenters' concerns about the use of the term ''enforce'' and about the scope of the CCO's duty to develop policies and procedures.

7. Reporting Line—§ 3.3(a)(1) & (2)

Proposed § 3.3(a)(1) required that the CCO report to the board of directors or the senior officer of a registrant, that the board or senior officer approve the compensation of the CCO, and that the board or senior officer meet with the CCO at least once a year to discuss the effectiveness of compliance policies and their administration by the CCO. Proposed § 3.3(a)(2) also prohibited the board or senior officer of a registrant from delegating its authority over the CCO, including the authority to remove the CCO.

The CCO NPRM requested comment on the degree of flexibility in the reporting structure, including whether it would be more appropriate for a CCO to report to the board or the senior officer; whether the board or the senior officer is a stronger advocate on compliance matters; whether the proposed reporting structure should address issues related to affiliates; and whether the rule should include a provision requiring a majority of the board to remove the CCO. The proposal also requested comment regarding whether it is necessary to adopt rules for the CCO regarding conflicts of interest between compliance interests, commercial interests, and ownership interests of a registrant.

Cargill recommended that the definition of board of directors be expanded to include a governing body of a division, such as a management committee, if the SD registration applies to activities within a division of a larger company, rather than the company as a whole. Cargill also recommended that the Commission add a definition of ''senior officer'' and that it include a senior officer of a division, because a division might be more familiar with the swaps activities of an SD. Cargill and The Working Group each argued that a requirement that a CCO can be removed only by a majority of the members of a governing body would be inflexible, and should not be added to the rules.

The Working Group argued that the CCO should be allowed to report to a board of an affiliated entity that controls both the affiliate and the registrant. The Working Group also argued that the CCO should be permitted to operate under the direction of other corporate officers, even middle level officers, so that the CCO is not an independent inspector general that operates outside the traditional reporting structure within a corporate entity. EEI also argued that the proposal is overly prescriptive and recommends that the reporting structure be left to each individual firm. Similarly, FIA and SIFMA commented that although the board is the ultimate supervisory authority, the CCO should not be required to directly report to it. Instead, firms should be free to determine the reporting structure as long as independence and authority as a control function is maintained. FIA and SIFMA recommended, for example, that the CCO be allowed to report to the chief legal officer or the chief risk officer.

On the other hand, Rosenthal commented that the CCO should report to the board or, if the registrant is not a corporation, to the senior officer. Rosenthal also commented that the CCO should be prohibited from receiving any transaction or customer-based compensation to insulate the CCO from potential conflicts. NSCP also agreed that CCOs should report to senior management and have compensation set by managers that are not influenced by the profitability of particular business units. NSCP noted that new Organizational Sentencing Guidelines consider whether individuals with operational responsibility for compliance and ethics have direct

reporting obligations to the governing authority or an appropriate subgroup thereof (like an audit committee of a board), which the proposed rules would require. NSCP recommended that a provision be added to the proposed rules to make it illegal for a registrant to coerce a CCO improperly, similar to the one for CCOs of investment companies and independent public accountants.

Better Markets and Chris Barnard recommended that decisions to designate or terminate a CCO, as well as compensation decisions, be prescribed as the sole responsibility of independent members of the board of directors, or audit committee, acting by majority vote, and not the responsibility of the executive officer. Better Markets also recommended that both the board and the senior officer be required to meet with the CCO to discuss the effectiveness of compliance policies, and that such meetings be held at least quarterly. Better Markets further recommended that the CCO's duties be performed in consultation with both the board and the senior officer.

National Whistleblowers Center (NWC) recommended that the term ''senior officer'' be defined as the CEO or chairman of the board, and should not be the general counsel or a subordinate employee to the CEO. NWC believes that the rule should permit the CCO to report to the full board at any time with no interference from a board committee or a CEO. NWC also argued that the rule should prohibit termination of the CCO unless the CCO is presented the opportunity to address the board.

MetLife requested that the definition of board of directors include ''(or committee of such board or governing body)'' to permit it to continue its current practice of delegating particular responsibilities to expert committees of the whole board (i.e., audit, finance, investments, risk, and compensation). NFA also sought additional flexibility in the reporting structure for CCOs, provided that the firm's business unit is not permitted to impose undue pressure on a CCO regarding compliance.

Newedge recommended that the CCO be required to meet at least quarterly with the board or senior officer to discuss the effectiveness of compliance policies.

The Working Group believes it is not necessary to address conflicts of interest between compliance interests and commercial interests in the rule because the independent audit requirements imposed by the Sarbanes Oxley Act already address such conflicts.

Having considered these comments, the Commission will not permit CCOs to report to committees of a board of directors. Section 4s(k) of the CEA requires the CCO to ''report directly'' to the board or the senior officer of the SD or MSP. In other contexts (for example the risk management duties rules for SDs and MSPs discussed above), reporting to committees of the board is permitted. However, in this context, the Commission believes that the statutory requirement that the CCO report directly to the board or senior officer does not afford such discretion. The Commission is guided by the policy objectives of section 4s(k) in reaching the same conclusion with regard to FCMs, and observes that no currently registered FCM requested that the CCO report to a committee of the board. Indeed, Rosenthal, and FCM, agreed with the requirement that CCOs for FCMs report to a board of directors if the entity has one, or the senior officer, if the entity does not have a board.

In response to Cargill's comments, the Commission notes that under the CEA and under the rules as adopted, a registrant may elect to have the CCO report to the senior officer of the registrant. Because, ''senior officer'' is not defined, if a division of a larger company is a registered SD, then the CCO of such registrant could report to the senior officer of that division.

In order to preserve CCO independence, the Commission is not changing the requirement that only the board or the senior officer can hire, set compensation for, and remove the CCO. However, in order to promote consistency among the CCO rules for registrants and registered entities, the Commission is modifying proposed § 3.3(a)(1) and (2) to (i) require only that the CCO and board or senior officer meet once a year and at the election of the CCO, but not mandate the content of such meeting; and (ii) to clarify that only the board or senior officer may remove the CCO.

The Commission believes that additional requirements, such as providing the CCO an opportunity to address the board prior to removal, requiring more frequent meetings between the CCO and the board or senior officer, restricting the composition of CCO compensation, or mandating independent director approval, would be overly prescriptive and unnecessary to achieve the purposes of the rule. Similarly, the Commission believes that a provision prohibiting improper coercion is unnecessary because the rule adequately ensures CCO independence through a direct reporting line to the board or senior officer and by requiring compensation decisions to be made by the board or a senior officer.

8. Qualifications—§ 3.3(b)

As proposed, § 3.3(b) required the CCO to have the background and skills appropriate for fulfilling the responsibilities of the position, and prohibited an individual who is statutorily disqualified under sections 8a(2) or 8a(3) of the CEA from serving.[39] The proposal requested comments regarding whether additional limitations should be placed on CCOs, such as a prohibition on designating a registrant's counsel as CCO.

NFA argued that the statement that no individual disqualified from registration under section 8a(2)–(3) of the CEA may serve as a CCO is redundant because an SD, MSP, or FCM's registration could be denied or revoked under section 8a(2)–(3) of the CEA if any principal of the registrant is subject to a statutory disqualification. NFA argues that inclusion of this qualification in the proposed rule could appear to convey a different standard for CCOs than for other principals.

Cargill commented that the requirement for a CCO to have ''the background and skills appropriate'' is a commendable aspirational goal but is too vague a standard for Federal law, and is best reserved as a business decision. Cargill agreed that the requirement to be listed as a principal applies statutory disqualification standards that are clear and objective.

Newedge recommended that CCOs be required to pass a specific compliance examination and obtain a specific compliance license, as is the case in the securities world. On the other hand, NSCP does not believe that CCOs should have to pass a qualification exam or otherwise have a certain number of years in the industry, given the diversity of the registrant community. The Working Group also commented that wide latitude for qualifications of a CCO is necessary.

EEI argues that the general counsel and other attorneys should be allowed to be the CCO because they are subject to ethics considerations and a prohibition on conflicts in their representation. NFA also recommended that the CCO be permitted to be an attorney who represents the registrant or its board as long as the conflict can be

[39] These CEA sections contain an extensive list of matters that constitute grounds pursuant to which the Commission may refuse to register a person, including, without limitation, felony convictions, commodities or securities law violations, and bars or other adverse actions taken by financial regulators.

managed and duties discharged. Rosenthal and Hess felt that persons with legal training may be well-suited as CCOs, and that the rule requirement to demonstrate compliance proficiency is reasonable. To the contrary, Better Markets argued that a CCO should not be permitted to be an attorney that represents the SD, MSP, or FCM, or its board because the potential conflict would disqualify such an attorney.

Having considered these comments, the Commission is adopting the rule substantially as proposed, with only a technical change to clarify the references to sections 8a(2) and 8a(3) of the CEA. The Commission believes it is important for the ''Qualifications'' section of the rule to put registrants on notice of the possible disqualification of CCO candidates pursuant to the CEA. The benefit of such notice outweighs the concern of creating an appearance of a different standard for CCOs than for other principals. The Commission is retaining the ''background and skills'' qualification in the final rule because the standard effectively will prohibit appointment of unqualified persons as CCO. However, the Commission does not believe that it is necessary to require a proficiency exam for CCOs at this time.

The Commission also agrees with Better Markets that there may be a potential conflict if a member of the legal department or the general counsel of a registrant also served as the registrant's CCO. The Commission notes that the final rules for SDRs prohibited members of the legal department or the entity's general counsel from serving as CCO.[40] On the other hand, the final rules for derivative clearing organizations did not include the same prohibition.[41] Given the diversity of FCMs and probable diversity of SDs and MSPs and cost considerations, the Commission is taking a flexible approach in these final rules and is not prohibiting a member of the legal department or general counsel from serving as CCO for an SD, MSP, or FCM. However, should a CCO be a member of the registrant's legal department, the Commission expects the CCO and registrant to articulate clearly the segregation of that individual's CCO and non-CCO responsibilities. All reports required under sections 4d(d) and 4s(k) of the CEA, as well as the rules promulgated pursuant thereto, are meant to be made available to the Commission, and as such, they should not be subject to the attorney-client privilege, the work-product doctrine, or other similar protections.

9. Duty To Establish Compliance Policies—§ 3.3(d)(1)

Proposed § 3.3(d)(1) required the CCO to establish the registrant's compliance policies in consultation with the board of directors or senior officer.

Hess and Newedge each argued that the proposal concentrates too much of the compliance function on a single individual to the exclusion of other members of senior management and day-to-day business line supervisors. Hess argued that overemphasis on the independent role of the CCO and concentrating responsibility is less effective than integration. Instead, Hess recommended that the CCO should remain the monitor of the compliance monitors, which they could not be if they are responsible for compliance.

The Commission believes that section 4s(k) of the CEA requires that the CCO administer the compliance policies, but that it does not require the CCO to establish all of a registrant's compliance policies. To alleviate some of the commenters' concerns regarding concentration of the compliance function, the Commission is revising the proposed rule to track more closely the statutory language of section 4s(k).

10. Duty To Resolve Conflicts of Interest—§ 3.3(d)(2)

Following section 4s(k)(2)(C) of the CEA, proposed § 3.3(d)(2) required the CCO, in consultation with the board or senior officer, to resolve any conflicts of interest that may arise.

NFA commented that resolution of conflicts of interest should rest with the board or the senior officer, in consultation with the CCO. FIA and SIFMA also commented that the CCO should not be deemed to be a business line supervisor and the rule should not fundamentally change the role of the CCO, which has customarily been an independent advisor to the business line supervisors that are ultimately responsible for compliance. FIA and SIFMA argued that when Congress used the term ''resolve any conflicts of interest that may arise,'' Congress did not mean resolve in the executive or managerial sense, requiring a CCO to examine the facts and determine the course of action. Instead, FIA and SIFMA recommended that the rule be revised to provide a definition of ''resolving conflicts of interest'' that reads: ''designing a system of conflict identification, assessment and resolution, advising on conflict avoidance or mitigation alternatives, and escalating inadequate management responses to conflicts to senior management. * * *'' Newedge commented that the CEO and business line supervisors are in a better position than the CCO to resolve conflicts. Newedge believes that any transfer of regulatory responsibility currently held by executive officers to the CCO could have the unintended effect of reducing the amount of time and level of concern such officers will spend on compliance matters.

Participants in the May Meeting with Commission staff stated that the phrase ''resolve any conflicts of interest'' would traditionally be interpreted as eliminating a conflict of interest, but that elimination is not always preferable. The participants commented that further interpretation is needed to permit conflicts of interest to be addressed, mitigated, or conditioned as well. Participants argued that the role of a compliance officer is to advise the business line of acceptable and unacceptable alternatives, and if the business line chooses an unacceptable alternative, then the compliance officer must escalate the problem until an acceptable alternative is selected. However, participants strongly believed that the compliance officer should not be the actual decision maker in the resolution.

Having considered these comments, the Commission is not removing the requirement that the CCO ''resolve'' conflicts of interest from the rule because the requirement is provided for in section 4s(k)(2)(C) of the CEA. However, the Commission confirms, as suggested by commenters, that the term ''resolve'' encompasses both elimination of the conflict of interest as well as mitigation of the conflict of interest, and that the CCO's role in ''resolving'' conflicts of interest may involve actions other than making the final decision. The Commission notes that the SEC has taken a similar approach in the preamble of its equivalent CCO proposal.[42]

[40] *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538, 54584 (Sept. 1, 2011).

[41] *See* 17 CFR 39.10; Derivatives Clearing Organization General Provisions and Core Principals, 76 FR 69334, 69434 (Nov. 8, 2011).

[42] *See* Business Conduct Standards for Security-Based Swap Dealers and Major Swap Participants, 76 FR 42396, 42436 (July 18, 2011) (stating ''we would anticipate that the CCO's role with respect to such resolution and mitigation of conflicts of interest would include the recommendation of one or more actions, as well as the appropriate escalation and reporting with respect to any issues related to the proposed resolution of potential or actual conflicts of interest, rather than decisions relating to the ultimate final resolution of such conflicts'').

11. Duty To Review and Ensure Compliance—§ 3.3(d)(3)

Following the statutory text of section 4s(k)(2)(E) of the CEA, proposed § 3.3(d)(3) required the CCO to review and ''ensure compliance'' by the registrant with the registrant's compliance policies and all applicable laws and regulations.

FIA and SIFMA argued that the term ''ensure compliance'' needs to be clarified, because the common usage of the word (i.e., to guarantee) goes well beyond any existing compliance model and creates a standard that is impossible to satisfy. FIA and SIFMA further argued that the requirement to remediate non-compliance issues, and the discussion of management's response to remediation, acknowledges that instances of noncompliance are not wholly preventable by any person, and that it is management's responsibility for implementing compliance policies. Instead, FIA and SIFMA recommended that the phrase should mean taking reasonable steps to adopt, review, test, and modify compliance policies, and pointed to the Commission's RFED rule, which requires each RFED to designate a CCO that must certify that the RFED has in place policies and procedures ''reasonably designed to achieve compliance with the Act, rules, regulations and orders thereunder.'' FIA and SIFMA also recommended that the Commission add a provision in the definition of compliance policies and procedures to include ''procedures for escalating inadequate management responses to apparent material violations of compliance policies and procedures to the appropriate level of senior management * * * depending on the facts and circumstances of the issues being addressed.''

The Working Group argued that the requirement to ''ensure compliance'' should not be adopted literally from the statute, because it is an impossible task. The Working Group recommended that the rules be revised to avoid suggestions that an incident of noncompliance by a firm might constitute or evidence a failure by a CCO to meet its statutory or regulatory responsibilities.

NSCP argued that ''ensure compliance'' imposes a level of responsibility on a CCO that cannot be discharged and is inconsistent with the customary role of a compliance officer. Instead, NSCP recommended that the CCO ''administer the system of compliance that is designed to ensure compliance with compliance policies and applicable law.'' NSCP concedes that although the statutory language may be viewed as constraining, it offers section 501 of the Gramm-Leach-Bliley Act as an example of constraining language modified by regulation. NSCP stated that section 501 of that act required financial institutions to adopt safeguards to ''ensure the security and confidentiality of personal information,'' but that banking regulators modified the standard to require adoption of safeguards ''designed to ensure the security and confidentiality of personal information.'' NSCP further argued that the business units within registrants either obey the law or violate it, and a CCO is limited to providing guidance, monitoring for compliance, and reporting on the business activities.

NFA commented that it should not be the duty of the CCO to ensure compliance by the FCM, SD, or MSP because it is an impracticable standard and imposes a duty to supervise a firm's business activities. NFA argued that the rules improperly redefine a CCO's duties, and registrants will have difficulty retaining CCOs who are willing to perform these duties. NFA believes that FINRA's Rule 3130 sets forth the appropriate role of a CCO.

Participants in the May Meeting with Commission staff stated that the CCO's responsibility to escalate (repeatedly if necessary) a problem that has not been resolved could serve as a possible meaning of the term ''ensure compliance'' when applied to the CCO position.

EEI believes that a basic tenet of modern compliance is that compliance departments advise, monitor, assist, and escalate to a governing body if necessary. EEI argued that the act of complying must be borne and executed by the business, and imposing responsibility on the CCO could abrogate responsibility of senior management and other employees.

Newedge believes that the CCO should be required only to review whether a registrant has established policies designed to achieve compliance and that the responsibility to enforce compliance should lie with the business line. Newedge believes the enormity of the obligations assigned to the CCO would result in inadequate means of ensuring compliance, defeating the plain purpose of the statute.

In response to the comments received regarding the role of the CCO in ensuring compliance, the Commission is modifying the proposed rule to provide that the CCO must take ''reasonable steps to ensure compliance.'' The Commission believes that this approach is responsive to commenters' concerns, is consistent with the final rules for SDRs [43] and DCOs,[44] and is broadly consistent with the SEC's proposal for the duties of a CCO of a security-based swap dealer or a major security-based swap participant.[45]

In response to comments advocating a purely advisory role for the CCO, the Commission observes that the role of the CCO required under the CEA, as amended by the Dodd-Frank Act, goes beyond what has been represented by commenters as the customary and traditional role of a compliance officer. While the Commission does not believe, as some commenters have suggested, that the CCO's duties under the CEA or § 3.3 requires that the CCO be granted ultimate supervisory authority by a registrant, it is the Commission's expectation that the CCO will, at a minimum, be afforded supervisory authority over all staff acting at the direction of the CCO. Recent events have demonstrated the importance of the active compliance monitoring duties required of the CCO under the Dodd-Frank Act, as implemented through these regulations.

12. Duty To Prepare, Sign, and Certify Compliance Annual Report—§ 3.3(d)(6)

Proposed § 3.3(d)(6) required the CCO of an SD, MSP, or FCM to prepare, sign, and certify, under penalty of law, the annual report specified in section 4s(k)(3) of the CEA.

Rosenthal commented that FINRA's approach to certification is preferable, i.e., that the CEO certifies that the firm has processes to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with securities laws, regulations, and FINRA rules, based on a report by the CCO. FIA, SIFMA, and Newedge each argued that section 4s(k)(3) of the CEA requires the CCO to sign the annual report, but does not require the CCO to certify the report. FIA, SIFMA, MFA, Newedge,

[43] *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR at 54584 (stating that the duties of an SDR's CCO include ''[t]aking reasonable steps to ensure compliance with the [CEA] and Commission regulations'').

[44] *See* Derivatives Clearing Organization General Provisions and Core Principals, 76 FR at 69434 (stating that the duties of a DCO's CCO include ''[t]aking reasonable steps to ensure compliance with the [CEA] and Commission regulations'').

[45] *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 76 FR 42396, 42458–59 (July 18, 2011) (requiring the CCO of a security-based swap dealer or major security-based swap participant to ''[e]stablish, maintain and review policies and procedures reasonably designed to ensure compliance with the Act and the rules and regulations thereunder'').

and NFA all recommended that the rule be revised to require the CEO to certify the report. Participants in the May Meeting with Commission staff stated that requiring the CEO, rather than the CCO, to make a certification as to whether policies are in place that are reasonably designed to ensure compliance appropriately shares responsibility between compliance and business management. FIA and SIFMA recommended that if the Commission requires the CCO to certify the annual report, then with respect to any Commission registrant that is also a BD, the Commission also should require the CEO to make the certification

Rosenthal argued that requiring the CCO to certify under penalty of law will make the CCO liable for firm infractions and will give disgruntled customers a roadmap for frivolous lawsuits. Newedge also believes that the requirement to certify under penalty of law is not fair or practicable because whoever certifies will have to rely on many individuals to compile the report. On the other hand, Hess commented that the certification language strikes an appropriate balance such that strict liability is not imposed for inadvertent errors. NSCP commented that the certification that the report is accurate and complete should have a materiality qualifier added to it. Participants in the May Meeting with Commission staff requested clarification as to how the certification of the accuracy and completeness of the information in the annual report might be kept separate from matters of opinion expressed in the annual report. The participants urged the Commission to adopt a standard for the annual report certification that is reasonably attainable.

FIA and SIFMA requested that the Commission clarify that criminal liability for the certification will not apply (absent a knowing and willful materially false and misleading statement) because there is no indication that Congress ever thought CCOs should be subject to criminal liability. Similarly, NSCP requested that the Commission clarify whether ''under penalty of law'' means liability under 18 U.S.C. 1001 for a false statement to a Federal officer. FIA and SIFMA also felt that imposing criminal liability for annual report certifications would make it hard to fill the position of CCO.

EEI argued that although section 4s(k)(3) of the CEA requires the CCO to certify the report, any additional content requirements for the annual report beyond what section 4s(k)(3) requires will make the certification more difficult.

In response to these comments, with respect to certification by the CCO, the Commission is modifying the proposed rule to permit either the CCO or the CEO to make the required certification. Section 4s(k)(3)(A) of the CEA requires the CCO to sign the annual report and section 4s(k)(3)(B)(ii) requires that the annual report contain a certification that, under penalty of law, the compliance report is accurate and complete. Given the statutory provisions and under these circumstances, the Commission believes it is appropriate to afford SDs, MSPs, and FCMs the discretion to choose whether the CCO or CEO will make the certification.

The Commission disagrees with commenters that a mere certification that policies are in place that are reasonably designed to achieve compliance would satisfy the requirements of section 4s(k)(3) of the CEA. The Commission believes that the statute also requires a CCO to assess how compliance policies are implemented.

The Commission is of the view that limiting the certification with the qualifier ''to the best of his or her knowledge and reasonable belief'' addresses commenters' concerns of overbroad liability because the rule would not impose liability for compliance matters that are beyond the certifying officer's knowledge and reasonable belief at the time of certification. If the certifying officer has complied in good faith with policies and procedures reasonably designed to confirm the accuracy and completeness of the information in the annual report, both the registrant and certifying officer would have a basis for defending accusations of false, incomplete, or misleading statements or representations made in the annual report.

With respect to requests for clarification of the liability that may attach to the certification ''under penalty of law,'' the Commission notes that administrative, civil, and/or criminal liability could be imposed on the registrant or the certifying officer or both, either directly or vicariously. As explained in the NPRM, possible violations could include a claim of failure to supervise or false statements to the Commission, and the Commission could seek an injunction against future violations, civil monetary penalties, and/or any other appropriate relief. Additionally, criminal penalties may be sought by criminal authorities for willful violations of the CEA or Commission regulations, in appropriate cases.

The Commission is declining to add a materiality qualifier to the certification, as suggested by commenters. This approach is consistent with the statutory text, with the approach taken in final rules for SDRs[46] and DCOs,[47] and with proposed CCO rules for SEFs.[48]

13. Description and Review of Compliance in Annual Report—§ 3.3([e])(1) and (2)

The proposed regulation required the annual report to contain a description of the compliance by the registrant with respect to the CEA and regulations; a description of each of the registrant's compliance policies; and a review of each applicable requirement under the CEA and regulations, and, with respect to each, identification of the policies that ensure compliance, an assessment as to the effectiveness of the policies, discussion of areas of improvement, and recommendations of potential or prospective changes or improvements to its compliance program and resources devoted to compliance.

NSCP, The Working Group, EEI, and Hess each argued that the level of detail contemplated by the rule would impose unnecessary burdens on the CCO with little offsetting benefits. NSCP argued that a better approach would be to follow the SEC requirements for annual reviews of compliance by registered investment advisers. NSCP stated that such reviews must reflect review of the adequacy of policies established and the effectiveness of their implementation (SEC Rule 206(4)–7(b)). NSCP believes the proposed rule is overbroad and discourages reporting of compliance issues to the CCO because if every issue, no matter how trivial, must be reported and recorded, there may be a chilling effect on open communication. NSCP believes that the key issue should be whether material issues were escalated and remedied. Newedge argued that thousands of Federal, SRO, and internal rules apply, so the report should contain a summation of compliance, with details only for areas of material noncompliance.

FIA and SIFMA argued that a one-size-fits-all approach to the annual report requirements is not appropriate because some registrants are not public reporting companies, some have customers while others only conduct

[46] *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR at 54584.

[47] *See* Derivatives Clearing Organization General Provisions and Core Principals, 76 FR at 69435.

[48] *See* Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214, 1252 (Jan. 7, 2011).

proprietary trading, some deal with retail customers while others only deal with sophisticated counterparties, and some are small and local, while others are large, integrated institutions with thousands of employees worldwide.

FIA and SIFMA recommended that the Commission specify the material issues that should be discussed, so that there is no second guessing with respect to the adequacy of the report, and that the Commission clarify that compliance policies only include those relating to the CEA and Commission regulations. FIA, SIFMA, and NFA also argued that the report should identify the policies that are reasonably designed to result in compliance, not that ensure compliance. Hess recommended that the annual report contain only a summary of the registrant's compliance policies and procedures. CMC commented that the scope of activities included in the annual report should be limited to those directly triggering the requirement of a CCO. EEI argued that inclusion of descriptions of violations in the report to the Commission should not be decided by the CCO, but should be decided on a case-by-case basis by the registrant's governing body. NFA requested that a materiality qualifier be added to the requirement that registrants include a description of non-compliance.

Better Markets recommended that the board approve the annual report in its entirety or specify where and why it disagrees with any provision, and then CCOs should provide the report to the Commission either as approved or with statements of disagreement.

The Working Group recommended that the Commission develop a standard form of report and guidance as to how such report needs to be completed.

In response to the comments received, the Commission is modifying the proposed requirements for the annual report in § 3.3([e]) to (i) require the annual report to contain a description of the registrant's policies and procedures, rather than a description of the compliance of the registrant; (ii) require the annual report to identify the registrant's policies and procedures that ''are reasonably designed'' to ensure compliance, rather than those that ensure compliance; (iii) require a description of *material* non-compliance issues. The Commission agrees with commenters that certain information need be reported only if it is materially significant and that the requirement to ''ensure compliance'' can be interpreted to mean ''safeguard'' rather than ''guarantee.''

14. Certification of Compliance With Sections 619 and 716 of the Dodd-Frank Act in Annual Report—§ 3.3([e])(3)

The proposed regulation required registrants to include in the annual report a certification of compliance with sections 619 and 716 of the Dodd-Frank Act (the Volcker Rule and Derivatives Push-Out), and any rules adopted pursuant to these sections.

NFA recommended that the certification of compliance with sections 619 and 716 of Dodd-Frank be deleted, arguing that the Commission should wait for the implementing rulemakings for such sections before determining certification requirements.

FIA and SIFMA commented that the requirement to certify compliance with the Volcker Rule and Derivatives Push-Out provisions should be included as part of the rulemaking that will address the scope and requirements of those provisions, but not be prematurely included in the CCO rule.

In consideration of these comments, the Commission has determined not to finalize this provision.

15. Description of Compliance Resources in Annual Report—§ 3.3([e])(6)

Proposed § 3.3([e])(6) required the annual report to contain a description of the registrant's financial, managerial, operational, and staffing resources set aside for compliance with the CEA and regulations, including any deficiencies in such resources.

FIA and SIFMA argued that the CCO is not in a position to describe the financial, material, operational, and staffing resources set aside for compliance. FIA and SIFMA recommended that the CCO only be required to describe the resources of the compliance department and any recommendations that the CCO has made to senior management with regard to financial, managerial, operational, or staffing resources.

The Working Group argued that a description of deficiencies in resources dedicated to compliance would require a CCO to identify potential shortcomings and report them in a document likely to be available to the public, which could materially hinder the CCO's ability to function as an integral member of the management team.

Having considered these comments, the Commission is adopting the rule as proposed, but with the addition of a materiality standard with respect to the description of any deficiency. The Commission does not believe that the required description of resources available for compliance would hinder the CCO's ability to fulfill his or her duties in coordination with others in the firm. The rule requires a description of compliance resources, but does not prescribe the form or manner of this description, which the Commission views as within the reasonable discretion of the registrant.

16. Delineation of Roles of the Board and Senior Officer in Addressing Conflicts of Interest in Annual Report—§ 3.3([e])(7)

The proposed regulations required the annual report to include a delineation of the roles and responsibilities of a registrant's board of directors or senior officer, relevant board committees, and staff in addressing any conflicts of interest, including any necessary coordination with, or notification of, other entities, including regulators.

FIA and SIFMA argued that the Sarbanes-Oxley Act already requires public companies to report the roles and responsibilities of its board, senior officers, and committees in resolving conflicts of interest, so the Commission should allow such reporting to satisfy this content requirement for the annual report. NFA also recommended that the reporting of any necessary coordination with, or notification of other entities, including regulators, should be deleted.

In response to FIA, SIFMA, and NFA's comments, the Commission is deleting § 3.3([e])(7) from the final rule. This provision is not essential to the Commission's evaluation of registrants' compliance programs, and if it is relevant to a material compliance matter, it will be provided to the Commission pursuant to § 3.3([e])(6). The Commission also notes that removing this provision will make the CCO requirements for FCMs, SDs, and MSPs more consistent with the CCO requirements for SDRs and DCOs, and those proposed for SEFs.

17. Recordkeeping—§ 3.3([g])

Proposed § 3.3([g]) required FCMs, SDs, and MSPs to maintain records of its compliance policies, materials provided to the board in connection with its review of the annual compliance report, and work papers that form the basis of the annual compliance report.

The Working Group argued that retaining all materials relating to the preparation of the report will cause the CCO to retain all materials for fear of an audit that second-guesses the CCO's materiality judgments, or the CCO will limit his or her inquiries to avoid making a determination of materiality. The Working Group recommended that

materials to be retained should be only those germane to the content of the compliance report.

Better Markets recommended adding a requirement that discussions between a CCO and traders or executives with oversight of traders involving compliance and trading practices and strategies be recorded by the CCO and retained in the CCO's records. Better Markets believes this requirement is necessary because the duties of the CCO could come into conflict with the interests of traders and managers.

The Commission is adopting the rule as proposed. In response to The Working Group's comment, the Commission believes the rule sufficiently qualifies the materials that must be retained by stating that the records must be ''relevant'' to the annual report. With regard to Better Markets' recommendation that CCOs record discussions with traders and executives regarding compliance and trading practices, the Commission believes that this material will be covered by the rules to the extent that the annual report requires the CCO to assess the effectiveness of the registrant's policies and procedures and describe any material non-compliance issues and the corresponding action taken. Consequently, any conflicts that arise between the CCO and the trading unit of an SD, MSP, or FCM in which the CCO believes that the requirements of the CEA and Commission regulations, including risk management obligations, are not being met, must be included in the annual report. Additionally, under § 3.3(g)(1)(iii), all records of that conflict as described in the annual report must be maintained. The Commission further notes that in such instances, it would be good practice for the CCO to make and maintain records of all discussions with traders and management.

III. Effective Dates and Compliance Dates

In the Duties NPRM, Recordkeeping NPRM, and CCO NPRM, the Commission requested comment on the length of time necessary for registrants to come into compliance with the proposed rules.

A. Comments Regarding Compliance Dates

The Working Group recommended that the Commission not require compliance with proposed §§ 23.600 through 23.607 for at least two years, not require compliance with proposed §§ 23.200 through 23.205 for six to twelve months to provide adequate time to develop the necessary information technology systems and business practices, and not require compliance with the CCO designation requirement of proposed § 3.3 for one year after registration. With respect to § 23.601, The Working Group also commented that if complex requirements are included in position limit rules, such as the requirement to convert customized bilateral transactions into futures-equivalents, substantially more time will be required for firms to design and implement procedures to monitor compliance with position limits. With respect to proposed § 3.3, The Working Group commented that entities should be able first to hire a CCO and then be permitted a reasonable period of time in which to write, test, and implement policies and procedures. With respect to all of the proposed rules, The Working Group recommended that the Commission provide an extended transition period for firms that have not been prudentially regulated by a financial regulator and might require substantial corporate restructuring.

FIA, ISDA, SIFMA, and the Financial Services Forum argued that if existing systems are not easily adaptable to §§ 23.200 through 23.205, the Commission must provide sufficient time for registrants to make the necessary changes in an orderly manner, but no specific time period was provided. FIA, ISDA, SIFMA, and the Financial Services Forum also recommended that compliance with proposed § 3.3 should not be required until after the regulatory requirements under section 4s of the CEA for which the CCO is responsible are finalized and become effective.

Cargill recommended that the Commission provide SDs with at least one year to come into compliance with proposed §§ 23.600 through 23.607 following the effective date of the rules. Cargill also stated that one year was a reasonable period to comply with proposed § 3.3.

MetLife recommended that the Commission allow one year from registration as an MSP to comply with the proposed §§ 23.600 through 23.607, because such compliance will require hiring required human capital resources, build out of necessary information technology, development of policies and procedures and internal vetting of a mandated risk management program. MetLife also stated that it would it would require one year after registration to recruit a CCO and develop a compliance program in compliance with proposed § 3.3.

NSCP stated that 18 months was necessary for registrants that do not currently have a CCO to comply with proposed § 3.3.

The Bank of Tokyo-Mitsubishi UFJ, Ltd., Mizuho Corporate Bank, Ltd., and Sumitomo Mitsui Banking Corporation recommended that the effective date of the rules be deferred until December 31, 2012.

The Commission received no comments related to the length of time necessary for registrants to come into compliance with the rules proposed in the SD/MSP Conflicts NPRM and FCM/IB Conflicts NPRM.

B. Compliance Dates

Having considered the comments received, the Commission is adopting the effective and compliance dates as set forth below.

1. Reporting, Recordkeeping and Daily Trading Records of SDs and MSPs—§§ 23.200–23.205

The effective date of §§ 23.200 through 23.205 will be the date that is 60 days after publication of the final rules in the **Federal Register**.

SDs and MSPs that are currently regulated by a U.S. prudential regulator or are registrants of the SEC must comply with §§ 23.200, 23.201, 23.202, 23.203, 23.204, and 23.205 by the date that is the later of 90 days after publication of these final rules in the **Federal Register** or the date on which SDs and MSPs are required to apply for registration pursuant to § 3.10. SDs and MSPs that are not currently regulated by a U.S. prudential regulator and are not registrants of the SEC must comply with §§ 23.200, 23.201, 23.202, 23.203, 23.204, and 23.205 by the date that is the later of 180 days after publication of these final rules in the **Federal Register** or the date on which SDs and MSPs are required to apply for registration pursuant to § 3.10.

2. Duties of SDs and MSPs—§§ 23.600 Through 23.607

The effective date of §§ 23.600 through 23.607 will be the date that is 60 days after publication of the final rules in the **Federal Register**.

With respect to § 23.600 (Risk Management Program), SDs and MSPs that are currently regulated by a U.S. prudential regulator or are registrants of the SEC must comply with § 23.600 by the date that is the later of 90 days after publication of this final rule in the **Federal Register** or the date on which SDs and MSPs are required to apply for registration pursuant to § 3.10. SDs and MSPs that are not currently regulated by a U.S. prudential regulator and are not registrants of the SEC must comply with § 23.600 by the date that is the later of 180 days after publication of this final rule in the **Federal Register** or the date

on which SDs and MSPs are required to apply for registration pursuant to § 3.10.

With respect to § 23.603 (Business Continuity and Disaster Recovery), SDs and MSPs that are currently regulated by a U.S. prudential regulator or are registrants of the SEC must comply with § 23.603 by the date that is the later of 180 days after publication of this final rule in the **Federal Register** or the date on which SDs and MSPs are required to apply for registration pursuant to § 3.10. SDs and MSPs that are not currently regulated by a U.S. prudential regulator and are not registrants of the SEC must comply with § 23.603 by the date that is the later of 270 days after publication of this final rule in the **Federal Register** or the date on which SDs and MSPs are required to apply for registration pursuant to § 3.10.

With respect to § 23.601 (Monitoring of Position Limits), § 23.602 (Diligent Supervision), § 23.605 (Conflicts of Interest Policies and Procedures), § 23.606 (General Information: Availability for Disclosure and Inspection), and § 23.607 (Antitrust Considerations), SDs and MSPs must comply with §§ 23.601, 23.602, 23.605, 23.606, and 23.607 by the later of the effective date of these rules or the date on which SDs and MSPs are required to apply for registration pursuant to § 3.10.

3. Conflicts of Interest Policies and Procedures by FCMs and IBs—§ 1.71

The effective date of § 1.71 will be the date that is 60 days after publication of the final rule in the **Federal Register**.

FCMs and IBs that are registered with the Commission as of the effective date of this rule must comply with § 1.71 by such effective date except that such FCMs need not comply with § 1.71(d) until the later of the effective date or the date on which SDs and MSPs are required to apply for registration pursuant to § 3.10. FCMs and IBs that are not registered with the Commission as of the effective date of this rule must comply with § 1.71 upon registration with the Commission, except that such FCMs need not comply with § 1.71(d) until the later of their registration or the date on which SDs and MSPs are required to apply for registration pursuant to § 3.10.

4. Chief Compliance Officer of FCMs, SDs, and MSPs—§ 3.3

The effective date of § 3.3 and the amendments to § 3.1 will be the date that is 60 days after publication of the final rule in the **Federal Register**.

With respect to § 3.3 (Chief Compliance Officer), SDs and MSPs that are currently regulated by a U.S. prudential regulator or are registrants of the SEC, must comply with § 3.3 by the date that is the later of 180 days after publication of this final rule in the **Federal Register** or the date on which SDs and MSPs are required to apply for registration pursuant to § 3.10. SDs and MSPs that are not currently regulated by a U.S. prudential regulator and are not registrants of the SEC must comply with § 3.3 by the date that is the later of 360 days after publication of this final rule in the **Federal Register** or the date on which SDs and MSPs are required to apply for registration pursuant to § 3.10. FCMs that are (1) registered with the Commission as of the effective date of the rule, and (2) currently regulated by a U.S. prudential regulator or are registrants of the SEC, must comply with § 3.3 by the date that is 180 days after publication of this final rule in the **Federal Register**. FCMs that are (1) registered with the Commission as of the effective date of the rule, and (2) not currently regulated by a U.S. prudential regulator and are not registrants of the SEC must comply with § 3.3 by the date that is 360 days after publication of this final rule in the **Federal Register**. FCMs that are not registered with the Commission as of the effective date of this rule must comply with § 3.3 upon registration with the Commission.

IV. Cost Benefit Considerations

A. Introduction

The swaps markets, which have grown exponentially in recent years, are now an integral part of the nation's financial system. As the financial crisis of 2008 demonstrated, inadequate understanding, oversight, and management of swaps can contribute to systemic risk.[49] The internal business conduct standards that the Commission is promulgating for SDs and MSPs in this rulemaking are an important element of the ''improve[d] financial architecture'' that Congress intended in enacting the Dodd-Frank Act.[50] For, as entities that, respectively, engage in swap dealing activities [51] and ''whose outstanding swaps create substantive counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets,'' [52] the standards that SDs and MSPs follow (or fail to follow) in transacting their swaps may have repercussions for financial system stability more broadly. Effective systemic risk management for swaps begins with effective internal risk management protocols of individual SDs and MSPs.

Title VII of the Dodd-Frank Act mandates the Commission to establish risk management requirements for SDs and MSPs. Specifically, Section 731 adds new section 4s of the CEA that, among other things:

- Establishes reporting, recordkeeping, and daily trading records requirements for SDs and MSPs.[53]
- Defines and imposes duties on SDs and MSPs with regard to: (1) Risk management procedures,[54] (2) monitoring of trading to prevent violations of applicable position limits,[55] (3) diligent supervision,[56] (4) disclosure and the ability of regulators to obtain general information,[57] and (5) antitrust considerations.[58]
- Establishes conflicts-of-interest requirements for SDs and MSPs to establish information partitions between research and trading and between trading and clearing.[59]
- Requires each SD and MSP to designate a chief compliance officer, set out qualifications and duties of the chief compliance officer, and require that the chief compliance officer prepare, sign, and furnish to the Commission an annual report containing an assessment of the registrant's compliance activities.[60]

Additionally, Dodd-Frank Act section 732 amends section 4d of the CEA to add conflict of interest requirements for

[49] As the U.S. Senate Committee on Banking, Housing, and Urban Affairs explained in reporting what became the Dodd-Frank Act, while a ''downturn in the national housing market'' was the 2008 financial crisis' ''first trigger:''

* * * the use of unregulated derivatives products based on [faulty mortgage loans was among the elements that] only served to spread and magnify the risk. The system operated on the wholesale misunderstanding of, or complete disregard for the risks inherent in the underlying assets and the complex instruments they were backing * * *' Technology, plus globalization, plus finance has created something quite new, often called ''financial technology.'' Its emergence is a bit like the discovery of fire—productive and transforming when used with care, but enormously destructive when mishandled' * * * Gaps in the regulatory structure allowed these risks and products to flourish outside the view of those responsible for overseeing the financial system.

S. Rep. No. 111–176, at 43 (2010) (quoting former Comptroller of the Currency, Eugene Ludwig; citations omitted).

[50] *Id.* at 228. Stated another way, they are an aspect of that legislation's ''comprehensive regulation and rules'' to achieve a ''strengthened infrastructure for the financial system * * * intended to make the system more resilient and resistant to the adverse effects of financial instability.'' *Id.* at 228–29.

[51] CEA section 1(a)(49)(A).

[52] CEA section 1(a)(33)(A)(ii).

[53] CEA section 4s(f)&(g).

[54] CEA section 4s(j)(2).

[55] CEA section 4s(j)(1).

[56] CEA section 4s(h)(1).

[57] CEA section 4s(j)(3).

[58] CEA section 4s(j)(6).

[59] CEA section 4s(j)(5).

[60] CEA section 4s(k).

FCMs and IBs,[61] and a chief compliance officer requirement for FCMs.[62] This rulemaking implements these provisions of sections 4s and 4d of the CEA.

Section 15(a)[63] of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing an order. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. To the extent that these new regulations reflect the statutory requirements of the Dodd-Frank Act, they will not create costs and benefits beyond those resulting from Congress's statutory mandates in the Dodd-Frank Act.[64] However, to the extent that the new regulations reflect the Commission's own determinations regarding implementation of the Dodd-Frank Act's provisions, such Commission determinations may result in other costs and benefits. It is these other costs and benefits resulting from the Commission's own determinations pursuant to and in accordance with the Dodd-Frank Act that the Commission considers with respect to the section 15(a) factors.

The Commission is obligated to estimate the burden of and provide supporting statements for any collections of information it seeks to establish under considerations contained in the PRA, 44 U.S.C. 3501 et seq., and to seek approval of those requirements from the OMB. To the extent costs of the rulemaking are associated with collections of information, the estimated burden and support for such collections of information, as well as the consideration of comments thereto, are discussed in the PRA section of this rulemaking and the information collection requests filed with OMB as required by that statute. The Commission has also considered these costs, which it incorporates herein by reference, in its CEA section 15(a) analysis.

In each of the NPRMs encompassed within this final rulemaking, the Commission asked for public comment on the costs and benefits of the proposed regulations, and specifically invited commenters to submit ''any data or other information * * * quantifying or qualifying'' the costs and benefits of the proposal.[65] The Commission also separately requested comments on the overall costs and benefits of the proposed rules implementing the Dodd-Frank Act.[66] The Commission received approximately 51 comments addressing the cost and benefit considerations of the proposed rules, but few commenters presented to the Commission quantitative data pertinent to any of the proposed rulemakings, and no commenter stated whether such data is ascertainable with a degree of certainty that could inform Commission deliberations. After conducting a review of applicable academic literature, the Commission is not aware of any research reports or studies that are directly relevant to its considerations of costs and benefits of these final rules.

The Commission considered the comments on the costs and benefits of the proposed rules and, in particular, reasonable alternatives suggested by commenters. As detailed in the discussions of each rulemaking above, the Commission is adopting alternatives or modifications to the proposed rules where, in the Commission's judgment, the alternative or modification accomplishes the same regulatory objective in a less burdensome manner. Indeed, the Commission has sought to reduce the burden on market participants to the extent doing so satisfies the statute's requirements and does not undermine important benefits that the Commission believes the statute was intended to promote. In addition to benefits, the costs of the regulations and the steps the Commission has taken to mitigate them are discussed below.

Notwithstanding the paucity of available quantitative information, the Commission has endeavored to estimate quantifiable costs and benefits of the final rules when possible. Where estimation or quantification is not feasible, the Commission provides a qualitative assessment of the relevant costs and benefits. In the following discussion, the Commission: (i) Addresses comments regarding the effects of these final rules in terms of their material costs and benefits; (ii) considers the material cost and benefit implications of these final rules in comparison to baseline costs imposed by the statutory requirements and discusses cost mitigation undertaken in modifying the rules as proposed; and (iii) considers the material costs and benefits of the final rules in light of the five broad areas of market and public concern pursuant to section 15(a) of the CEA. After discussing some general considerations applicable to all rulemaking areas covered by this release and comments regarding rule scope, the cost-benefit considerations are divided among the following rulemaking areas: recordkeeping; duties and risk management; conflicts-of-interest policies and procedures; and designation of a CCO.

B. General Considerations

This rulemaking generated an extensive record, which is discussed at length throughout this notice as it relates to the substantive provisions in the final rules. A number of commenters stated that they would incur significant, though largely unquantified, costs because of the proposed rules. Others identified benefits attributable to the proposed rules or more stringent requirements. The Commission carefully considered these comments and the alternatives proposed in them.[67]

In response to the Commission's invitation for comments on the overall costs and benefits of the proposed rules,[68] Better Markets stated that the Commission's cost-benefit analyses in the notices of proposed rulemaking may have understated the benefits of the proposed rules.[69] Better Markets argued

[61] CEA section 4d(c).

[62] CEA section 4d(d).

[63] 7 U.S.C. 19(a).

[64] Certain commenters, such as The Working Group and the FHLBs, posit that there is no benefit to be derived from internal business conduct standards as mandated by Congress and that the mandated provisions do not generate sufficient benefits relative to costs or contribute to the purposes (e.g., mitigating systemic risk and enhancing transparency) of the Dodd-Frank Act. As such, these commenters' concerns fall outside the Commission's regulatory discretion to implement sections 4s and 4d of the CEA and fail to raise issues subject to consider under section 15(a).

[65] *See* SD/MSP Conflicts NPRM, 75 FR at 71395; FCM/IB Conflicts NPRM, 75 FR at 70157; Duties NPRM, 75 FR at 71404; Recordkeeping NPRM, 75 FR at 76673; and CCO NPRM, 75 FR at 70886.

[66] *Id.*

[67] These comments also have been addressed in other sections of this release. This section's consideration of costs and benefits reviews and assesses them to the more narrow extent that they raise relative cost/benefit issues. A complete policy analysis of, and response to, these comments can be found in section II of this release.

[68] *See* SD/MSP Conflicts NPRM, 75 FR at 71395; FCM/IB Conflicts NPRM, 75 FR at 70157; Duties NPRM, 75 FR at 71404; Recordkeeping NPRM, 75 FR at 76673; and CCO NPRM, 75 FR at 70886.

[69] *See* Letter from Better Markets dated June 3, 2011(comment file for 75 FR 71397 (Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants)). On the other hand, certain commenters, such as The Working Group and the FHLBs, posit that there is no benefit to be derived from internal business conduct standards as mandated by Congress and that the mandated provisions do not generate sufficient benefits relative to costs or contribute to the purposes (e.g., mitigating systemic risk and enhancing transparency) of the Dodd-Frank Act.

that adequate assessment of the costs and benefits of any single proposed rule or element of such a rule would be difficult or impossible without considering the integrated regulatory system of the Dodd-Frank Act as a whole. According to Better Markets:

> It is undeniable that the Proposed Rules are intended and designed to work as a system. Costing-out individual components of the Proposed Rules inevitably double counts costs which are applicable to multiple individual rules. It also prevents the consideration of the full range of benefits that arise from the system as a whole that provides for greater stability, reduces systemic risk and protects taxpayers and the public treasury from future bailouts.

Better Markets also stated that an accurate cost benefit assessment must include the avoided risk of a new financial crisis and opined that one measure of this is the still accumulating cost of the 2008 financial crisis.[70] The Commission agrees with Better Markets that the proposed rules should operate in a coordinated manner to improve and protect financial markets; notwithstanding this, the Commission must (and has) conducted a cost-benefit analysis with respect to this specific rulemaking.

Recognizing that there will be costs incurred to comply with the regulations, the Commission believes there are significant benefits to be gained from these requirements, including but not limited to, increased risk management and enhanced transparency. While the Commission notes that the costs and benefits stemming from these regulations, in large part, are attributable to the baseline statutory mandate, each subsection herein further details the costs and benefits of the numerous discrete provisions of the rules in order to inform market participants more fully of the costs and benefits anticipated by the Commission.

As a general matter across these rules, the Commission sought to ease the burden for market participants through tailored phasing in of compliance requirements. In each of the Duties NPRM, Recordkeeping NPRM, and CCO NPRM, the Commission requested comment on the length of time necessary for registrants to come into compliance with the proposed rules. These comments are enumerated in section III.A., and the Commission considered those comments in adopting compliance dates for each rule as set forth in section III.B. above. The approach recommended by commenters and accepted by the Commission recognizes and generally differentiates between registrants that have been previously regulated by the SEC or a prudential regulator and those that have not been previously regulated. The Commission has elected to provide additional time for compliance, where appropriate, for those that have not been previously regulated. In many instances, the Commission is providing more time for all market participants beyond the statutorily prescribed minimum of 60 days.

C. Comments Regarding the Scope of the Proposed Rules

Several commenters questioned the scope of the proposed rules and implicitly, if not expressly, whether the breadth as proposed was appropriate in light of the costs that would result to certain registrants. Comments illustrative of the concerns are discussed below.

The FHLBs articulated several reasons[71] for exempting them from the proposed internal business conduct standard rules. First, they maintain that subjecting FHLBs to internal business conduct standards could cause them to cease offering swaps transactions to their risk-hedging members, depriving their members of a competitive swap transaction counterparty and potentially increasing members' hedging costs. Second, they maintain that many of the requirements duplicate those imposed by their prudential regulator, the Federal Housing Finance Agency (FHFA), thus there is no incremental benefit attributable to the additional costs of complying with the proposed rules.[72]

The Commission finds the FHLB's position unpersuasive. First, the concern that FHLBs would cease transacting swaps is undermined by the FHLB's position that the proposed rules in large part duplicate the requirements of its prudential regulator; if internal business conduct standards would likely curb the FHLBs' swaps activity, presumably that would have occurred already. Second, the Commission construes the FHLB's position to be inconsistent with the statutory intent of sections 4s(f), (g), (j), and (k)—i.e., consistent Commission oversight of SDs and MSPs, regardless of whether they are also subject to regulation by a prudential regulator. For, in the one area that Congress intended the Commission to defer to prudential regulation with respect to SDs and MSPs—capital and margin requirements—it provided so expressly.[73] There is no such express language requiring prudential regulation deference in sections 4s(f), (g), (j), and (k). This gives rise to a negative inference that, with respect to them, Congress intended the Commission to establish uniform requirements for SDs and MSPs, notwithstanding any overlapping prudential regulation. In addition, to the extent that, as the FHLBs assert, FHFA rules are substantively similar with the proposed rules, compliance with the proposed rules should not present substantial additional compliance costs.

The Working Group suggested that the proposed rules would impose substantial costs with no corresponding increase in risk management and compliance effectiveness. The Commission disagrees. It believes that its final internal business conduct standards will enhance risk management by requiring, among other things: (1) SDs and MSPs to have a complete understanding of the various risks that the entity faces; and (2) entities to monitor their traders for compliance with trading policies established by the SD or MSP. These final rules also require that SDs and MSPs have sound recordkeeping policies in place, which will ensure that swap transactions are fully memorialized. Sound risk management and internal controls on an individual firm level is the basis of systemic risk mitigation.

Other commenters (MetLife, MFA, BlackRock, and AMG) argued that the Dodd-Frank Act does not require the Commission to apply the same rules to MSPs as those applied to SDs, and that MSPs should not be subject to the same regulations as SDs because MSPs do not engage in market-making activities. These commenters contend that the costs of compliance would be too high for MSPs. The Commission believes that the statutory baseline under sections 4s(f), (g), (j), and (k) of the CEA is identical treatment of SDs and MSPs. The statutory provisions of sections 4s(f), (g), (j), and (k) of the CEA do not distinguish between the requirements applied to SDs and those applied to MSPs. Additionally, in response to claims that the costs will be too high for MSPs, the Commission notes that if an

[70] The comment letter cited Andrew G. Haldane, Executive Director for Financial Stability of the Bank of England, who estimated the worldwide cost of the crisis in terms of lost output at between $60 trillion and $200 trillion, depending primarily on the long term persistence of the effects.

[71] In addition to the two reasons discussed, the FHLBs also expressed that, unlike external business conduct standards, the internal business conduct standards as mandated by Congress in the Dodd-Frank Act do not generate benefits to justify their costs. As noted above, this concern falls beyond the Commission's implementation discretion.

[72] SIFMA made a similar argument with respect to all SDs and MSPs that are subject to regulation by a prudential regulator.

[73] *See* CEA section 4s(e).

MSP does not engage in certain activities, the regulations pertaining to those activities are not applicable. Therefore, in these cases, the Commission believes MSPs would be relieved of any burden such regulations present.

Finally, Cargill recommended that the Commission make clear that the Commission's regulations only apply to the swap dealing business of an SD that is a division of a larger company, and not to the other, non-swaps-related business activities of the company.[74] The Commission has accepted the alternative proposed by Cargill by including a new definition of ''swaps activities'' in the final regulations and by limiting the scope of several requirements to fit this definition. Adopting this alternative approach should allow entities to understand their duties and requirements under the final regulations more clearly and reduce costs by limiting the scope of the rules' applicability.

D. Recordkeeping, Reporting, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

As added by section 731 of the Dodd-Frank Act, sections 4s(f) and 4s(g) of the CEA establish reporting and recordkeeping requirements and daily trading records requirements for SDs and MSPs. Section 4s(f)(1) requires SDs and MSPs to ''make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant.'' In the Recordkeeping NPRM, the Commission proposed regulations, pursuant to sections 4s(f)(1)(B)(i) and (ii) of the CEA, prescribing the books and records requirements for ''all activities related to the business of swap dealers or major swap participants,'' regardless of whether or not the entity has a prudential regulator, as required by statute. In addition, the Commission proposed regulations in the Recordkeeping NPRM pursuant to section 4s(g)(1) of the CEA, requiring that SDs and MSPs ''maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash and forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls.'' The Commission notes that section 4s(g)(3) requires that daily trading records for each swap transaction be identifiable by counterparty, and section 4s(g)(4) specifies that SDs and MSPs maintain a ''complete audit trail for conducting comprehensive and accurate trade reconstructions.''

The Commission received 14 comment letters on the Recordkeeping NPRM. The Commission considered each in formulating the final rules, including any alternatives proposed and cost or benefit concerns expressed. Of the 14 comments received, five addressed issues relevant to the costs and benefits of the proposed rules, but no letters provided any quantitative data to support their claims. The comment letters focused on 9 areas of the rule that are most relevant to the Commission's consideration of costs and benefits. Each of these areas is discussed below. A more detailed discussion can be found in section II.B–E. above.

1. Additional Types of Records

In the Recordkeeping NPRM, the Commission requested comments regarding whether additional types of records other than those specified in the proposed rules under § 23.201 should be required to be kept by SDs and MSPs. The Commission also requested comment regarding whether drafts of documents should be kept. Having considered the comments received,[75] the Commission is not requiring any additional types of records in the final rule. Although the Commission agrees that drafts may provide information regarding the development of transactions, the Commission does not believe that the marginal incremental value of such information is sufficient to require draft retention. The Commission also notes that pertinent pre-execution trade information that may appear in drafts is already subject to retention under the daily trading records rule.

2. Reliance on SDRs for Recordkeeping Requirements

The proposed regulations did not address whether an SD or MSP could fulfill the recordkeeping requirements by reporting a swap to a swap data repository (SDR), but ISDA & SIFMA requested that the Commission consider the extent to which SDs and MSPs may rely upon SDRs to retain records beyond the time periods that registrants currently retain such records. ISDA & SIFMA did not elaborate on the current retention periods for swaps records, nor did they explain how this approach would work in the absence of established SDRs for all types of swaps. The Commission considered this alternative to its recordkeeping rules, but determined that it is premature at this time to permit SDs and MSPs to rely solely on SDRs to meet their recordkeeping obligations under the rules. Additionally, the Commission believes that SDs and MSPs must maintain complete records of their swaps for the purposes of risk management. The data that is required to be reported to an SDR may not be sufficient for these purposes. At present, SDRs are new entities under the Dodd-Frank Act with no track record of operation; and, for particular swaps asset classes, SDRs have yet to be established. As SDRs evolve, the proposed alternative may prove appropriate, but the Commission believes that putative cost-savings benefits attributable to SDR record retention in lieu of individual firm record retention are too speculative presently to justify modification of the proposed rules.

3. Records in a Single Electronic File, Searchable by Transaction and Counterparty

Proposed § 23.201(a)(1) required SDs and MSPs to keep transaction records in a form identifiable and searchable by transaction and by counterparty. Proposed §§ 23.202(a) and 23.202(b) also required SDs and MSPs to keep daily trading records for each swap and any related cash or forward transaction as a separate electronic file identifiable and searchable by transaction and counterparty. Commenters had several concerns with the costs of complying with this requirement.[76] In particular, commenters objected to the burden of maintaining the records required for each transaction in a separate electronic file and with maintaining the records in a manner searchable by transaction and counterparty. No commenter quantified the exact cost of these requirements, but the Commission recognizes that SDs and MSPs would incur costs to comply with both requirements. The Commission retained the requirement that trading records be searchable by transaction and

[74] Presumably, Cargill believes that limiting application of Commission regulations to a specific division, rather than the entirety of a larger company, will result in cost savings, although it does not directly advance this argument.

[75] The Working Group commented that the current proposal is sufficient. Chris Barnard, however, recommended that drafts of documents should also be kept, arguing that the decision process leading up to a final document can be very informative.

[76] ISDA & SIFMA argued that SDs and MSPs routinely store data across a number of systems, and that aggregating transaction data from all systems into a single electronic file would require a large investment across market participants and would require a substantial implementation period. The Working Group also argued that tying relevant records to each individual transaction in a manner that is identifiable and searchable by transaction would create a heavy technical burden.

counterparty because it interprets this to be the statutory minimum imposed by section 4s(g)(3) of the CEA, i.e., that registrants ''maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.'' However, the Commission is modifying the proposed rules to remove the provision in § 23.202(a) and § 23.202(b) that requires each transaction record to be maintained as a separate electronic file. The Commission believes that this modification trims the rule's requirements to the baseline required by statute, reducing the burden to the maximum extent possible.

4. Form of Maintaining Business Records

As proposed, § 23.201(b) required SDs and MSPs to keep full, complete, and systematic business records, including records related to corporate governance, financial records, complaints, and marketing and sales materials. The Working Group recommended that, to minimize burden, the Commission permit these records to be retained as they currently are in the normal course of business. Responding to this concern, the Commission confirms that the rule does not require SDs and MSPs to keep the required business records in a single comprehensive file so long as such records can be readily accessed and provided to the Commission upon request. This confirmation as requested by The Working Group will minimize the burden on SDs and MSPs with regard to establishing new recordkeeping policies.

5. Records of Complaints Received by MSPs

Proposed § 23.201(b) required SDs and MSPs to retain a record of complaints received, certain identifying information about the complainant, and a record of the disposition of the complaint. Without quantifying any cost, MFA commented that, because MSPs do not have customers nor make markets in swaps, it is unwarranted to subject them to the burden of retaining a complaint record. The Commission finds MFA's position unpersuasive and is adopting the rule as proposed. The Commission has no basis to find that the burden of maintaining a complaint record will impose significant cost on MSPs. Moreover, the Commission believes that the relevant consideration is not whether MSPs have customers or whether they make markets, but the fact that they have substantial swaps positions and the potential significance of their swaps activities that defines them as MSPs. Given this, the Commission believes a record of complaints, particularly if it establishes a pattern, could be of important regulatory value.

6. Recording of Pre-Execution Trade Information, Including Voice Recordings

Proposed § 23.202(a)(1) required SDs and MSPs to make and keep records of pre-execution trade information, including records of all oral and written communications concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a swap, however communicated. As explained above, the Commission has eliminated the requirement that pre-execution trade information be maintained in a separate electronic file for each transaction. Otherwise the Commission is adopting the rule as proposed despite commenters concerns as to the cost of the required recording [77] because it believes the information specified in the rule is the minimum necessary to maintain an audit trail as statutorily required by section 4s(g)(4) of the CEA.

7. Timestamp for Quotations Using Universal Coordinated Time (UTC)

Proposed § 23.202 required SDs and MSPs to use Universal Coordinated Time to record the time of each quotation provided to, or received from, a counterparty prior to execution; the time of swap and related cash and forward transaction execution; and the time of swap confirmation. The rule's use of UTC reflects an approach consistent with the Commission's final rules for real-time public reporting,[78] and the swap data reporting rule.[79] By requiring the use of UTC in § 23.202, the Commission is ensuring that the requirements of Part 23, Part 43, and Part 45 remain consistent to the extent possible. The Commission sees important benefits deriving from required UTC consistency in reporting and recordkeeping: avoiding the need to convert timestamps created in many different time zones is essential for timely and efficient automated processing of large amounts of market and pricing data by the Commission and others. Based on its belief that rapid automated processing is critical to the success of its regulatory mission, the Commission disagrees with the comments of ISDA & SIFMA in their joint letter that the value of this benefit is ''minimal'' relative to the cost of moving to UTC, which cost they did not quantify. Moreover, the Commission believes that UTC works in complimentary tandem with Part 43 and Part 45 measures that promote straight-through-processing.[80]

8. Daily Trading Records for Cash and Forward Transactions Related to a Swap

Proposed § 23.202(b) required SDs and MSPs to keep daily trading records, similar to those SDs and MSPs are required to keep for swaps, for related cash and forward transactions.[81] The Commission is adopting the rule as proposed because section 4s(g)(1) of the CEA requires registrants to ''maintain daily trading records of their swaps * * * and related records (including related cash and forward transactions) . * * *'' No commenter objected to the proposed definition of ''related cash and forward transactions,'' although commenters argued that hedging and risk mitigation activities referred to in the proposed daily trading records rule typically are not executed with respect to specific trades and that it would not be possible to link cash and forward transactions to a specific swap.[82] The Working Group also argued that compliance with proposed § 23.202(b) would impose expensive and burdensome requirements on millions of physical transactions that are undertaken by commercial energy firms that are also parties to swap transactions. No commenter proposed, and the Commission has not identified, an alternative to achieve the statutory requirement in a less burdensome manner, however. Thus, the

[77] ATA commented that the current telephone recording systems in use by SDs and MSPs may not meet all of the proposed rule's requirements, and that implementing telephone recording systems that are compliant with the requirements would impose a significant additional cost. Notably, ATA did not propose any alternative ways that the Commission might achieve the statutory requirement of the CEA in a less burdensome manner.

[78] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1251 (Jan. 9, 2012).

[79] *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2212 (Jan. 13, 2012).

[80] Straight-through processing was considered a ''critical risk mitigate'' in a 2005 report released by an industry group chaired by the then-chairman of Goldman Sachs and composed of representatives from Citigroup, JP Morgan Chase, and Morgan Stanley, among other prominent financial institutions. *See* Counterparty Risk Management Policy Group II, Toward Greater Financial Stability: A Private Sector Perspective, July 27, 2005, p. 84. Publicly available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-docs/2005-07-25%20Counterparty%20Risk%20Management%20Policy%20Group-%20Toward%20Greater%20Financial%20Stability.pdf.*

[81] *See* definition under proposed § 23.200, ''a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a swap where the swap and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another.''

[82] ISDA & SIFMA and The Working Group made this point.

Commission is adopting the rule as proposed.

9. Record Retention Period

Proposed § 23.203(b)(2) required SDs and MSPs to retain records of any swap or related cash or forward transaction until the termination or maturity of the transaction and for a period of five years after such date. The Commission notes that proposed revisions to Commission regulation § 1.31 require retention of swap transaction records for a period of five years following the termination, expiration, or maturity of a swap,[83] and that § 23.203 is consistent with retention requirements under the final swap data reporting rule.[84] However, to mitigate costs in response to commenters' concerns[85] regarding retention of pre-execution trade information, the Commission is revising the rule to reduce the voice recording retention period to one year. The Commission considered a six-month retention period for voice recordings, as recommended by ISDA & SIFMA, but determined that for swaps, particularly long tenor swaps, a longer period is necessary in order to give trade discrepancies an opportunity to surface. In addition, the Commission believes that a one-year retention period is necessary to make the audit trail most useful for the Commission's enforcement purposes. The Commission believes the benefit of available voice recordings to clear up latent trade discrepancies and aide in enforcement actions justifies the incremental cost of an additional six-month retention period.

Costs

Sections 4s(f) and (g) of the CEA require SDs and MSPs to adopt and implement certain reporting and recordkeeping requirements. The costs and benefits that necessarily result from these basic statutory requirements are considered to be the ''baseline'' against which the costs and benefits of the Commission's final rules are compared or measured. The ''baseline'' level of costs includes the costs that result from the following activities required by the statute:

- Keeping books and records of all activities related to the business of the SD or MSP in such form and manner and for such period as may be prescribed by the Commission;
- Maintaining daily trading records of swaps and related cash or forward transactions and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, and including such information as the Commission shall require;
- Maintaining daily trading records for each counterparty in a manner and form that is identifiable with each swap;
- Maintaining a complete audit trail for conducting comprehensive and accurate trade reconstructions.

Compliance with the statutory baseline alone would result in costs for SDs and MSPs. For example, the requirement to maintain recorded communications would include the cost of a telephonic recording system. Similarly, compliance with the statutory provisions would require data storage and retrieval systems.

Congress mandated that the Commission adopt rules to implement each of the statutory provisions. With regard to its implementation decisions, the Commission has determined the following to be costs to SDs and MSPs to comply with the final regulations regarding recordkeeping obligations under Part 23:

- Compiling transaction, position, and business records;
- Compiling records of data reported to an SDR;
- Compiling records of real-time reporting data;
- Compiling daily trading records for swaps of pre-trade information, including all oral and written communications concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a swap, however communicated; execution trade information, including the name of the counterparty, the terms of each swap, the date and time of execution; and post-execution trade information;
- Compiling daily trading records for related cash and forward transactions of pre-trade information, including all oral and written communications concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a related cash or forward transaction, however communicated; execution trade information, including the name of the counterparty, the terms of each swap, the date and time of execution; and post-execution trade information;
- Data storage, in physical and/or digital format, in most cases for the term of a swap plus five years;
- Telephonic recording system (to record voice calls related to transactions); and
- Software and/or hardware updates to existing systems to capture and maintain the required records and to convert to Coordinated Universal Time.

With regard to the reporting requirements, the Commission has determined that compliance with the requirements relating to reporting swap data to an SDR and the real-time public reporting of swap transaction data will constitute compliance with such reporting requirements in section 4s(f). The reporting rules set forth in this release consist of cross-references to the reporting requirements in the rules relating to the reporting of swaps to an SDR and the real-time public reporting of swap transaction data. Accordingly, the Commission has considered the costs and benefits of reporting swap data to an SDR and real-time public reporting in those final rulemakings; therefore, those costs and benefits are not addressed in this rulemaking.[86]

As discussed, in adhering to its mandate from Congress, where possible the Commission also has attempted to alleviate the burdens on affected entities. In this regard, the Commission sought to minimize recordkeeping costs by eliminating the requirement that daily trading records of swaps and related cash and forward transactions be maintained as a separate electronic file.

Based on the available data, the Commission has been unable to reliably quantify the cost of compliance with the recordkeeping rules.[87] Although the rules were adapted from existing recordkeeping regulations from a variety of sources including the Commission's regulations and those of the SEC, such regulations have evolved over time and reliable quantitative data is generally not available regarding the costs of compliance with such requirements. A 1998 adopting release for the SEC's rules for OTC derivatives dealers

[83] *See* Adaptation of Commission Regulations to Accommodate Swaps, 76 FR 33066, 33088 (June 7, 2011).

[84] *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2212 (Jan. 13, 2012).

[85] *See* MFA (stating that the vast majority of its members do not keep records of transactions for five years and compliance with rule as proposed would be burdensome and costly); The Working Group (long-term electronic storage of significant amounts of pre-execution communication will prove costly over five-year period); ISDA (supporting a voice recording obligation aligned to the six-month minimum required by the UK Financial Services Authority); SIFMA (same). Chris Barnard, conversely, recommended that records should be required to be kept indefinitely rather than the general five years under the proposal. Mr. Barnard argued that documents can be scanned after five years, so there is no practical reason for limiting the retention period and the information would be useful for future analytical purposes.

[86] *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012); and Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012).

[87] To better inform this assessment, the Commission has conducted a review of applicable academic literature, but found no research reports or studies that are directly relevant to its considerations of costs and benefits of these final rules.

(including recordkeeping rules) cited commenters estimates in a range from $75,000 to $500,000 per year. Although dated, these SEC estimates provide a measure from which to very roughly attempt to gauge compliance costs.[88] Moreover, because financial entities that will likely be required to register as SDs are currently subject to prudential regulation or other form of regulatory oversight, the Commission believes they will already have some form of recordkeeping policies and procedures in place.

In contrast, the Commission anticipates that entities that are not subject to prudential regulation may incur greater costs to develop the infrastructure to comply with these recordkeeping requirements. In this respect, one commenter presented a report prepared by National Economic Research Associates, Inc. (NERA) stating that (1) compliance by certain entities with the proposed requirement that SDs and MSPs retain instant messages and tie them to transaction identifiers would entail average initial retention costs of $464,000 and average incremental ongoing annual costs of $228,000; (2) that the retention of phone calls would entail an average initial investment of $649,000 with additional annual costs of $382,000; and (3) that the requirement to time stamp transactions and use unique identifiers for transactions would entail average initial setup costs of $2,800,000 and average annual costs of $302,000.[89] The Commission notes that the required use of unique identifiers is the subject of another rulemaking not adopted in this release.

Certain of the costs associated with these recordkeeping rules result from collections of information subject to the Paperwork Reduction Act. Costs attributable to collections of information subject to the PRA are discussed further in section V.B.1. below. The Commission has also considered these costs, which it incorporates by reference herein, in its section 15(a) analysis.

Benefits

The Commission believes these recordkeeping requirements will contribute to important, though unquantifiable, benefits intended by the Dodd-Frank Act. More specifically, complete, rigorous transactional recordkeeping promotes both external and internal risk management by providing an audit trail of past transactions. A strong audit trail, in turn generates a number of benefits, including the following:

- It facilitates a firm's ability to recognize and manage its risk, thereby enhancing the risk management of the market as a whole.
- It acts as a disincentive to engage in unduly risky or injurious conduct in that the conduct will be traceable.
- In the event such conduct does occur, it provides a mechanism for policing such conduct, both internally as part of a firm's compliance efforts and externally by regulators.
- It provides a basis for efficiently resolving transactional disputes.
- And, it supports SDR reporting in that it provides a backstop to confirm the accuracy of reported information.

Section 15(a) Determination

1. Protection of Market Participants and the Public

The Commission believes that, by generating the benefits identified above, these rules provide important protections to swap market participants and the public. The recordkeeping requirements: (1) Promote the ability of SDs and MSPs to manage their risks through accurate and timely recordkeeping; (2) create disincentives for conduct, such as rogue trading, that could be injurious to the firm (as well as the market generally) by requiring a comprehensive audit trail; (3) support internal compliance efforts by requiring that complaints and other pertinent documents be retained; and (4) facilitate resolution of trade disputes. Public protection also is enhanced in that effective comprehensive, internal risk management improves risk management for the market as a whole. Moreover, the rules serve as an important link in the risk reduction chain envisioned by Congress in enacting the Dodd-Frank Act. Working in concert with other Dodd-Frank Act requirements, these rules further the goal of avoiding market disruptions and the resulting financial losses to market participants and the general public.

The Commission believes that any incremental costs of the final rules over those necessitated by the statutory baseline of sections 4s(f) and (g) of the CEA do not hinder the goal of effective protection of market participants and the public. Because some basic level of recordkeeping is fundamental to any financial undertaking, the Commission assumes that all likely SDs and MSPs currently keep records of some sort for their own internal control purposes. Therefore, the incremental costs of complying with the specific requirements of the Commission's final rules are unlikely to lead SDs or MSPs to withdraw from the market or cause SDs and MSPs to make investments in updating recordkeeping systems that would otherwise be directed to activities that increase protection of market participants or the public.

2. Efficiency, Competitiveness, and Financial Integrity of Markets[90]

Accurate recordkeeping is foundational to sound risk management and the financial integrity of SDs and MSPs, which impacts the financial integrity of markets. As illustrated by the collapse of firms during the 2008 financial crisis, poor recordkeeping can substantially impair resolution of customer claims.[91] Additionally, the recordkeeping rules will enhance the financial integrity of the markets by ensuring that swap transactions, especially those that are bilaterally executed and require the exchange of margin, are documented and recorded in a prompt and accurate manner. Market efficiency and competitiveness is benefited by accurate and timely recordkeeping and the creation of a complete audit trail to the extent that those requirements facilitate Commission's enforcement actions against market manipulation and other market abuses.

On the other hand, compliance with the rules is likely to require investment in recordkeeping, storage, and other back office systems; investment costs that otherwise could be used to enhance the efficiency and competitiveness of front office trading operations. For example, the telephonic recording systems that are required for recording oral communications may introduce new costs for SDs and MSPs that those

[88] *See* OTC Derivatives Dealers, 63 FR 59362, 59391 (Nov. 3, 1998).

[89] NERA, Cost-Benefit Analysis of the CFTC's Proposed Swap Dealer Definition Prepared for the Working Group of Commercial Energy Firms, December 20, 2011. In this late-filed comment supplement, NERA concludes that cost-benefit considerations compel excluding entities ''engaged in production, physical distribution or marketing of natural gas, power, or oil that also engage in active trading of energy derivatives''—termed ''nonfinancial energy companies'' in the report—from regulation as SDs, including these recordkeeping and reporting rules.

[90] Although by its terms CEA section 15(a)(2)(B) applies to futures markets only, the Commission finds this factor useful in analyzing regulations pertaining to swaps markets as well.

[91] *See* In re Lehman Brothers Holdings Inc., 08–13555, and *Giddens* v. *Barclays Capital Inc.,* 09–01732, U.S. Bankruptcy Court, Southern District of New York; *see also* Lehman Derivatives Records a ''Mess,'' Barclays Executive Says, available at *http://www.bloomberg.com/news/2010-08-30/lehman-derivatives-records-a-mess-barclays-executive-says.html* (reporting on testimony provided in previously cited Lehman bankruptcy proceeding).

entities would prefer to avoid in favor of enhancing trading operations.

3. Price Discovery

The Commission has identified no likely material impact on price discovery from the costs and benefits of these recordkeeping rules.

4. Sound Risk Management

The Commission believes that proper recordkeeping—though likely to require initial investment in recordkeeping and other back office systems—is essential to risk management because it facilitates an entity's awareness of its transactions, positions, trading activity, internal operations, and any complaints made against it, among other things. Such awareness supports sound internal risk management policies and procedures by ensuring that decision-makers within SDs and MSPs are fully informed about the entity's activities and can take steps to mitigate and address significant risks faced by the firm. When individual market participants engage in sound risk management practices, the entire market benefits. Accordingly, the Commission believes that these final rules, notwithstanding potential costs identified above, will promote the public interest in sound risk management.

5. Other Public Interest Considerations

The Commission has not identified any other public interest considerations that could be impacted by these recordkeeping and reporting obligations for SDs and MSPs.

E. Duties and Risk Management Requirements of Swap Dealers and Major Swap Participants

As part of an overall business conduct regime for SDs and MSPs, section 4s(j) of the CEA, as added by section 731 of the Dodd-Frank Act, sets forth certain duties for SDs and MSPs. In its Duties NPRM, the Commission proposed six regulations to implement section 4s(j), specifically addressing risk management, monitoring of positions limits, diligent supervision, business continuity and disaster recovery, the availability of general information, and antitrust considerations. The Commission's proposed conflicts-of-interest policies and procedures were the subject of the separate SD/MSP Conflicts NPRM.

As described in detail in the preamble, the Commission in preparing these final rules sought and incorporated comment from the public. The Commission received 20 comment letters on the Duties NPRM, and considered each in formulating the final rules. Of the 20, eight comments addressed issues relevant to the costs and benefits of the proposed rules, but only two provided any quantitative data to support their claims. The comments focused on seven areas of the rules that are most relevant to the Commission's consideration of costs and benefits. Each of these areas is discussed below. A more detailed discussion of the Commission's policy decisions can be found in sections II.F–L. above.

1. Scope of Risk Management Program

The proposed regulations required SDs and MSPs to establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the business of the SD or MSP. The Working Group, MetLife, and the Office of the Comptroller of the Currency, argued in favor of limiting § 23.600 to the risks associated with swaps activities, and not other business lines in which an entity may engage.[92] The Commission agrees with the commenters that its regulatory purpose is the management of the risk associated with SDs' and MSPs' swaps activities, not risks from their non-swaps activities, and is modifying the rule as they proposed. That is, the Commission is including a new definition of ''swaps activities'' in the final regulations and thus limiting the scope of several requirements. Clearly delimiting the activities of registrants subject to the rule in this way reduces the compliance burden of § 23.600.

The Commission, however, declines to adopt The Working Group's recommendation that the rule be limited further with respect to affiliates and consolidated entity risk management.[93] The Commission believes that considering the risks posed by affiliates is part of ''robust and professional'' risk management as required by section 4s(j), and provides a benefit to the registrant, its counterparties, and the swap market in the form of increased security and stability of the registrant. In the Commission's view, it is not unreasonably burdensome to require management of risk posed by affiliates—whether in the form of inter-affiliate transactions or otherwise—given their potential to be of the same kind and magnitude as risks posed by other swap counterparties. Likewise, the benefit of increased security and stability results from integrating the registrant's risk management program with risk management at the consolidated entity level, if applicable, where a top level company may be in the best position to evaluate risk due to its organization-wide view. Again, in light of this benefit, the Commission does not believe integration of an SD's or MSP's Risk Management Program into overall risk management at the consolidated entity level would be unduly burdensome.

2. Risks Covered by the Risk Management Program

The proposed regulation required a registrant's risk management program to include certain enumerated elements: Identification of risks and risk tolerance limits; periodic risk exposure reports; a new product policy; policies and procedures to monitor and manage market risk, credit risk, liquidity risk, foreign currency risk, legal risk, and operational risk; use of central counterparties; compliance with margin and capital requirements; monitoring of compliance with risk management program; and approval of trading policies and monitoring of traders.

In response to comments received, the Commission is modifying the rule in several respects as discussed specifically below. The Commission believes that each of these changes will reduce the compliance burden on SDs and MSPs. More generally, the Commission believes the rules allow registrants to manage their costs by relying upon existing compliance or risk management capabilities to a large extent.[94] In this respect, the rules generally only require ''policies and procedures'' to monitor and manage the enumerated risks, but do not prescribe the content of such policies and procedures or require any specific control systems.

Risk Tolerance Limits: With respect to risk tolerance limit exceptions, the

[92] Although not expressly stated by these commenters, the Commission presumes that burden concerns motivate their limitation requests, at least in part.

[93] More specifically, The Working Group recommended that the rule be revised to require the risk management program to take into account only *swaps-related* risks posed by affiliates and take an integrated approach to risk management at the consolidated entity level only to the extent the SD or MSP deems necessary to enable effective risk and compliance oversight. Presumably, The Working Group recommended these alternatives out of an unexpressed concern for increased costs necessitated by monitoring and managing other risks posed by affiliates or being required to take an integrated approach to risk management; it did not quantify these however.

[94] Comments of The Working Group, SIFMA, EEI, and MetLife, each of whom suggested that proposed § 23.600 be flexible enough to allow firms to adapt their existing compliance and risk management measures, and not cause firms to add entirely new compliance or risk management infrastructure.

Commission agrees with commenters [95] that requiring approval by risk management personnel would be more costly without materially enhancing benefits than allowing SDs and MSPs the flexibility to structure their approval process in accordance with written policies and procedures. Accordingly, the Commission has modified the rule to reflect this approach.

New Product Policy Requirement: Concerning the new product policy requirement, the Commission notes that the rule was adapted from existing regulatory guidance in this area,[96] and thus believes some SDs and MSPs already have such a policy in place; for them, the requirement would not impose any new burden. The Commission rejects the more limited alternative approach recommended by the Working Group—i.e., that before offering a new product an SD or MSP need only conduct due diligence that is commensurate with the risks associated with a new product, and receive approval from appropriate risk management and business unit personnel within the firm. While The Working Group's recommended approach may be less costly for some unspecified number of registrants that to date have not implemented a new product policy in line with the proposed rule and existing regulatory guidance, the Commission believes that the benefits to SDs, MSPs, and financial markets of greater scrutiny for new products, which may entail degrees of risk that are not initially evident, are sufficient to adopt the rule substantially as proposed. However, the Commission believes that SIFMA's recommended alternative—allowing approval of new products on a contingent or preliminary limited-time basis at a non-material risk level for the registrant to gain product experience and develop appropriate risk management processes for the product—better addresses the unforeseen risk potential. Accordingly, the Commission considers SIFMA's proposed alternative preferable on cost/benefit grounds to the rule as proposed and has modified the rule in line with it.

Reconciliation of Profits and Losses to the General Ledger: The Commission has responded to commenters that objected to the burden of daily reconciliation by modifying the rule to require periodic, rather than daily, reconciliation. The Commission believes this modification, increases the flexibility available to registrants to design cost-effective procedures best suited to their own circumstances.

Assessing Liquidity of Non-Cash Collateral: With respect to assessing liquidity of non-cash collateral, the Commission agrees with commenters that testing by simulated disposition presented an unnecessary cost to SDs and MSPs [97] and has adjusted the final rule to provide flexibility for registrants to design procedures to fit their own circumstances.

Foreign Currency Risk: With respect to foreign currency risk, rather than mandating daily measurement, The Working Group recommended relaxing the rule to allow firms discretion with respect to how frequently capital exposed to fluctuations in the value of foreign currency needs to be measured. The Commission is rejecting The Working Group's recommendation because daily measurement is necessary for effective prudent risk management because the foreign currency markets are fluid, quick moving, and potentially volatile. Given the wide availability of foreign currency pricing information at a low cost, the Commission does not believe that the cost of daily measurement is unduly burdensome in light of the benefit of consistent management of foreign currency risk.

Monitoring of Trading Requirements: Concerning the monitoring of trading requirements, the Commission agrees with commenters that the proposed rule's requirement that traders be monitored to prevent the incurrence of ''undue risk'' is vague and thus potentially burdensome to implement. To add clarity, the Commission is revising the rule to require monitoring of trading to prevent the incurrence of ''unauthorized risk.'' [98]

The Commission also agrees with The Working Group's recommendation that the proposed rule be modified to add a materiality standard for reporting of trade discrepancies to management. Accordingly, the Commission is modifying the rule to require that only trade discrepancies that are not immaterial, clerical errors be brought to the immediate attention of management of the business trading unit.

Use of Brokers: The Commission agrees with commenters recommending against tasking the risk management unit with reviewing brokers' statements, monitoring commissions or initiating broker payments; allowing these functions to be handled by operations or other control units, and presumably lowering the cost of compliance. The Commission has narrowed the rule to require risk management units to periodically audit brokers' statements and payments only. The Commission believes that this modification retains the benefits of the rule (independent oversight of the use of brokers), while lowering the cost of compliance by not requiring modifications to current operations.

3. Risk Exposure Reports

Proposed § 23.600(c)(2)(ii) required SDs and MSPs to provide their senior management and governing body with quarterly Risk Exposure Reports detailing the registrant's risk exposure and any recommendations for changes to the risk management program. Copies of these reports were required to be furnished to the Commission within five business days of providing them to senior management. The Working Group and Cargill suggested as an alternative that SDs' and MSPs' periodic Risk Exposure Reports be required only annually and submitted to the Commission only upon request. They argued that quarterly reports will be costly, distract risk management personnel from their primary responsibilities, and tax Commission resources to review reports that frequently. The Commission is declining to modify the rule as suggested because, as recent events have shown, it is important that financial firm management have frequent information about the risk exposures faced. This affords prompt corrective action important to maintain financial stability. The potential costs of instability in the financial markets have been exhibited in a number of recent failures of major financial institutions, such as Long Term Capital Management, Bear Stearns, Lehman Brothers, and others. The Commission believes that any incremental additional burden of providing Risk Exposure Reports on a quarterly rather than annual basis is not

[95] With respect to exceptions to risk tolerance limits, SIFMA recommended that trading supervisors, rather than risk management personnel, should have the authority to approve risk tolerance limit exceptions because the quarterly risk exposure reports provided to a registrant's senior management and governing body are an adequate check on decision-making by trading supervisors. Presumably, SIFMA believes trading supervisor approval presents less costs than risk management unit approval.

[96] *See* OCC's Comptroller's Handbook, Risk Management of Financial Derivatives at 7 (Jan. 1997); Federal Reserve Board's Trading and Capital-Markets Activities Manual.

[97] SIFMA recommended that the Commission not require testing of liquidation procedures by simulated disposition, but only require policies and procedures for identifying acceptable collateral and establishing appropriate haircuts, taking into account reasonably anticipatable adverse price movements, arguing that simulated disposition could be costly during periods of market stress.

[98] The Working Group and SIFMA requested that the Commission remove the requirement that firms monitor traders to prevent traders from ''incurring undue risk'' because the meaning of the phrase is ambiguous and presumably more costly to monitor under such standard.

significant and is warranted by the benefit of Commission oversight and early risk detection capability.

4. Frequency of Risk Management Program Testing

Proposed § 23.600(e) required SDs and MSPs to review and test their risk management programs quarterly using internal or external auditors independent of the business trading unit. As explained in more detail below, commenters objected to the costs of quarterly risk management program testing required by the rule. The Commission is modifying proposed § 23.600(e) to require only annual testing and audit of an SD's or MSP's risk management program, having been persuaded by the comments of The Working Group, Cargill, and MetLife, each of which recommended that both the frequency and the scope of audits of the risk management program be left to the discretion of the registrant so long as such audits are effective and are conducted at least annually. The Working Group and Cargill argued that this regime would provide the desired results without the unnecessary cost and administrative burden imposed by the proposed rules. The Commission agrees that the regulatory purpose of periodic testing will be met by annual testing. In order to further lessen the burden on SDs and MSPs, the Commission has determined not to specify testing procedures at this time, but to leave the design and implementation of testing procedures to the reasonable judgment of each registrant based on their own circumstances.

5. Monitoring of Position Limits

Proposed § 23.601 required SDs and MSPs to establish policies and procedures to monitor, detect, and prevent violations of applicable position limits established by the Commission, a designated contract market (DCM), or a swap execution facility (SEF), and to monitor for and prevent improper reliance upon any exemptions or exclusions from such position limits.

One commenter presented a report prepared by NERA stating that compliance with proposed § 23.601 for certain entities would entail average incremental start-up costs of $245,000 and average incremental ongoing annual costs of $228,000.[99] The Commission observes that the incremental average costs provided by NERA do not differentiate between the costs of compliance with proposed § 23.601 and the costs of compliance with section 4s(j)(1) of the CEA, which requires each SD and MSP to ''monitor its trading in swaps to prevent violations of applicable position limits.'' Accordingly, the Commission believes that the cost estimates presented by NERA exceed the incremental costs attributable to Commission rulemaking. The NERA report, however, provides insufficient information to allow the Commission to assess the magnitude of the excess.

As discussed in more detail below, the Commission has also quantified certain costs of a monitoring regime based on the assumption that a firm could choose to implement a particular monitoring regime from a wide range of compliance systems, based on the specific, individual needs of the firm. Several other commenters requested that the rule be modified to lessen the cost burden on registrants.[100] The Commission is reducing the burden on SDs and MSPs by modifying the rule as follows: (1) Require policies and procedures *reasonably* designed to monitor for and prevent violations of applicable position limits; (2) require only notification to relevant personnel of changes to applicable position limits (rather than training); (3) except on-exchange violations of position limits from the Commission reporting requirement; (4) require testing of position limit procedures only if the registrant has transactions in instruments for which position limits have been established; and (5) require testing of position limit procedures quarterly (rather than monthly).

With respect to quarterly reporting of compliance with position limits to the chief compliance officer, senior management, and governing body under proposed § 23.601(g), The Working Group recommended that the proposed rule should be revised to require only annual reports to the entity's senior management and governing body, but did not quantify the cost burden of quarterly reporting. The Commission recognizes that generating such reports will entail costs in the form of preparing and transmitting the reports as required by the rule, but is unable to quantify the cost because the reports will vary greatly depending on the trading volume of individual SDs and MSPs in products for which position limits have been established. As discussed above with respect to Risk Exposure Reports, the Commission believes that the benefit of such reporting will be timely notification to decision makers within the SD and MSP of the entity's record of compliance with applicable position limits, thus providing a timely opportunity to adjust or revise Position Limit Procedures to prevent future violations, if necessary, and avoiding the costs to the public of excessive speculation.

6. Diligent Supervision

Proposed § 23.602 required SDs and MSPs to: (1) Establish a system to supervise all activities relating to its business performed by its partners, members, officers, employees, and agents; (2) have that system be reasonably designed to achieve compliance with the CEA and Commission regulations; (3) have that system designate a person with authority to carry out the supervisory responsibilities of the SD or MSP; and (4) have all such supervisors meet qualification standards that the Commission finds necessary or appropriate.

The benefits of diligent supervision result from increased compliance with the regulatory standards of the CEA and the rules of the Commission. The standards that SDs and MSPs follow (or fail to follow) in transacting their swaps may have repercussions for financial system stability more broadly. Effective systemic risk management for swaps depends upon effective internal risk management protocols of individual SDs and MSPs and effective internal risk management in turn depends not

[99] NERA Economic Consulting, Cost-Benefit Analysis of the CFTC's Proposed Swap Dealer Definition Prepared for the Working Group of Commercial Energy Firms, December 20, 2011. In this late-filed comment supplement, NERA argues that cost-benefit considerations compel excluding entities ''engaged in production, physical distribution or marketing of natural gas, power, or oil that also engage in active trading of energy derivatives''—termed ''nonfinancial energy companies'' in the report—from regulation as swap dealers, including § 23.601.

[100] SIFMA recommended that testing of Position Limit Procedures be required only annually and not be required to be done all at the same time, The Working Group recommended that testing only be required on a semi-annual basis, and MetLife requested that the Commission permit the frequency of testing to be determined by an MSP based on the extent of its swap activities. MetLife also recommended that there be a clear exemption from testing requirements for MSPs that do not trade in swaps for which position limits have been established. BGA recommended that the Commission clarify that as long as an SD or MSP provides training on the position limits and establishes and enforces policies for monitoring, detecting, and curing violations, they will have met the obligation to ''prevent violations.'' SIFMA recommended that the Commission revise § 23.601(c) to provide that a change in position limit levels will not trigger ''training,'' but only require effective notification. The Working Group and MetLife recommended that the Commission require alerting the governing body only when a violation is material. The Working Group argued that the reporting of on-exchange violations of position limits to the Commission is already done by DCMs and will likely be the responsibility of SEFs as well, so SDs and MSPs should not be required to report on-exchange violations.

just on appropriate policies and procedures, but on diligent supervision by the registrant to ensure that such policies and procedures are actually followed.

No commenters provided quantitative data on the cost of complying with the diligent supervision rule, but several commenters requested changes to the rule to lessen the compliance costs of SDs and MSPs.

The Working Group recommended that the Commission not require designation of a single individual with responsibility for supervision. The Commission considered whether permitting SDs and MSPs to designate more than a single individual for supervisory responsibilities would lessen the benefits of the rule and determined that it would not. Accordingly, the Commission is modifying the rule to require SDs and MSPs to designate ''at least one person'' (rather than ''a person'') with authority to carry out supervisory responsibilities.

The Working Group also recommended that SDs and MSPs be given discretion to determine supervisor qualifications, presumably because such a standard would entail fewer compliance costs then the standard proposed (i.e., ''training, experience, competence, and such other qualification standards as the Commission finds necessary or appropriate''). The Commission considered whether the benefits of the rule could be maintained with this change, and determined they could not. Accordingly, the Commission is declining to modify the rule on this point because it believes that full accountability for compliance with the CEA and Commission regulations is best served by requiring designation of individuals with objective qualifications.

7. Business Continuity and Disaster Recovery

Proposed § 23.603 required SDs and MSPs to establish a business continuity and disaster recovery plan that includes procedures for and the maintenance of back-up facilities, systems, infrastructure, personnel, and other resources to achieve the timely recovery of data and documentation and to resume operations generally within the next business day. The proposed regulations also required SDs and MSPs to have their business continuity and disaster recovery plan tested annually by qualified, independent internal audit personnel or a qualified third party audit service. The Commission believes that all SDs and MSPs may be critically important to the proper functioning of the swaps market. SDs are critical participants in the swaps market and MSPs may have counterparty exposures that could have serious adverse effects on the financial stability of the United States. Therefore, the Commission believes the benefit of the rule is that it ensures, to the extent practicable, that system failures or natural disaster will not stop the proper functioning of the swaps market for more the one business day.

With respect to costs, the Commission again believes that it is not possible to reasonably quantify the industry-wide costs of a business continuity and disaster recovery program for SDs and MSPs because such costs necessarily flow from the size of the SD or MSP and the scope of activities in which it engages. One commenter stated that most SDs have the technology and network infrastructure in place to achieve a next day recovery time objective, reducing the incremental costs of compliance for these registrants. But the commenter also believes that some MSPs may have to develop and implement a plan from scratch. The commenter estimates that it would take up to 200 personnel days for MSPs to comply with this requirement. Thus, at eight hours a day and $100 per hour,[101] the upper end of personnel costs related to implementation for an MSP would be $160,000. In response, the Commission is lengthening the time for compliance to one year from the publication date of the final rule in the **Federal Register** for registrants that have not been previously regulated by a U.S. prudential regulator and are not SEC registrants. No other commenter provided cost estimates of compliance with the rule. Nevertheless, several commenters requested changes to the rule to reduce the cost of compliance.[102]

To further reduce the compliance burden, the Commission is additionally modifying the rule as follows: (1) Requiring procedures for alternative staffing (rather than back-up personnel); (2) requiring annual testing (rather than auditing); and (3) requiring auditing only once every three years. The Commission believes that these changes will lower compliance costs without reducing benefits.

Finally, SIFMA recommended that the Commission clarify that an SD's or MSP's business continuity and disaster recovery plan may be part of a consolidated plan established for the various entities in a holding company group. The Commission confirmed this could be the case.

Costs

Section 4s(j) of the CEA imposes certain duties and risk management requirements on SDs and MSPs. The costs and benefits that necessarily result from these basic statutory requirements are considered to be the ''baseline'' against which the costs and benefits of the Commission's final rules are compared or measured. The ''baseline'' level of costs includes the costs that result from the following activities required by the statute:

- Monitoring of trading in swaps to prevent violations of applicable position limits;
- Establishing robust and professional risk management systems;
- Disclosing to the Commission and applicable prudential regulators general information related to swaps and establishing internal systems and procedures to provide such information;
- Foregoing any process or action that results in any unreasonable restraint of trade, or impose any material anticompetitive burden on trading and clearing.

Compliance with the statutory baseline alone would result in costs for SDs and MSPs. For example, the requirement to monitor trading in swaps to prevent violations of applicable position limits would include the cost of designing and implementing monitoring procedures. Similarly, compliance with the statutory provisions would require establishment of robust and professional risk management policies and procedures.

Congress mandated that the Commission adopt rules to implement each of the statutory provisions. With regard to its implementation decisions, the Commission has determined the following to be costs to SDs and MSPs to comply with the final regulations regarding duties and risk management:

- Compiling and reporting certain risk assessment reports;
- Establishing, implementing, testing, and reviewing risk management policies and procedures;
- Auditing of policies and procedures;
- Ensuring the monitoring of traders and of applicable position limits;

[101] See section V.B. below for a discussion of the Commission's use of this hourly wage rate.

[102] The Working Group argued that the Commission should not require next business day recovery for non-systemically important SDs or MSPs, but should only require recovery ''reasonably promptly.'' The Working Group also argued that the Commission should not require staffing of back-up facilities to avoid the burden of requiring two persons for the same job, and recommended that the Commission should not require annual testing of the business continuity and disaster recovery plan by independent auditors because independent audits would be too costly.

• Implementing diligent supervision policies and procedures; and

• Implementing, testing, and reviewing business continuity and disaster recovery policies and procedures.

In adhering to its mandate from Congress, where possible the Commission has attempted to alleviate the burdens on affected entities. The Commission has modified the definition of ''governing body'' to provide additional flexibility and potentially eliminate the need for some registrants to change their current internal governance structures, thereby reducing compliance costs. The Commission has clarified that the requirements for a risk management program are confined to ''swaps activities'' of registrants, rather than the ''day-to-day business'' of the registrant, thereby avoiding the potential burden associated with an SD's or MSP's need to extend the program to any non-swaps business lines. In addition, risk management policies and procedures are required to be provided to the Commission only upon request, rather than upon any material change, reducing the reporting burden on registrants.

Risk management unit personnel are permitted to fulfill other duties. This should provide cost-lowering flexibility and potentially eliminate the need for some registrants to change current practices dramatically. The Commission also will permit limited preliminary approval for new products for testing purposes, reducing the necessary time and burden of new product analysis. Pricing models may be validated by internal personnel, eliminating the burden of hiring an external auditor to validate potentially valuable proprietary information. The requirement to reconcile profits and losses to the general ledger on a daily basis has been removed. Entities may perform an assessment of collateral liquidation procedures, instead of performing a potentially time-intensive and expensive test.

The proposed quarterly testing of risk management programs and position limit procedures has been reduced to annual testing to reduce costs. The proposed monthly testing of position limit procedures has been reduced to quarterly testing. To reduce the burden on senior management, only material trade discrepancies are required to be brought to senior management. The proposed employee training on position limits change has been modified to a notice requirement. Position limit violations that occur ''on-exchange'' are no longer required to be reported to the Commission by registrants, as the exchange will notify the Commission. Finally, business continuity and disaster recovery plans are required to be audited triennially (not annually, as proposed).

With respect to quantifying the cost of compliance with the final rules, one commenter stated that the cost of implementing a comprehensive risk management program will be substantial. The commenter analogizes the cost to the cost of implementing a compliance program and cites FERC administrative proceedings that required implementation of compliance programs at a cost of $1,000,000 to $2,000,000. The same commenter also estimates that a required audit of the risk management program would cost $24,000 per audit ($96,000 annually). Another commenter stated that implementation of a business continuity and disaster recovery program could take up to 200 personnel days. At eight hours a day and $100 per hour,[103] implementation personnel costs alone could thus cost a registrant $160,000. The Commission believes these estimates may be on the high end of the range of potential costs, given that some likely SDs are subject to prudential regulation or other form of regulatory oversight currently and will already have some form of risk management and business continuity program in place.[104] By contrast, costs are expected to be higher for those entities not currently regulated or not currently implementing risk management policies and procedures. In this respect, one commenter presented a report prepared by NERA estimating that compliance with the proposed rules for some entities in this category would entail annual incremental costs of $224,000.[105]

The Commission also has estimated potential costs to implement a tracking and monitoring system for position limits; the Commission anticipates that a firm could choose to implement a monitoring regime from a wide range of potential compliance systems, based on the specific, individual needs of the firm.[106] For example, a firm may elect to use an automatic software system, which may include high initial costs but lower long-term operational and labor costs. Conversely, a firm may decide to use a less capital-intensive system that requires more human labor to monitor positions. Thus, taking this range into account, the Commission anticipates, on average, labor costs per entity ranging from 40 to 1,000 annual labor hours, $5,000 to $100,000 in total annualized capital/start-up costs, and $1,000 to $20,000 in annual operating and maintenance costs.[107] The Commission contrasts this estimate with that provided by one commenter stating that compliance with proposed § 23.601 by non-financial energy companies would entail average incremental start-up costs of $245,000 and average incremental ongoing annual costs of $228,000.[108]

Other than as indicated with respect to monitoring for position limits, the limited cost data provided by commenters discussed above, and costs resulting from collections of information subject to the Paperwork Reduction Act (incorporated by reference herein), the Commission has little or no reliable quantitative data from which to reasonably estimate the costs of compliance with the duties and risk-management rules.[109] The

[103] *See* section V.B. below for a discussion of the Commission's use of this wage rate.

[104] The Commission notes that in 2006 the UK FSA conducted a cost benefit analysis when promulgating requirements related to ensuring effective risk controls, including requirements for implementing effective policies and procedures to identify, manage, monitor, and report current and possible risks. The UK FSA was adopting rules that replaced existing guidance and concluded from survey results that the incremental aggregate cost of compliance for approximately 2000–2500 firms was £10.5 to 14 million in one-off costs ($16.4 to 21.9 million at the current exchange rate, or $8,200 to $10,950 per firm) and £7 to 9.2 million in ongoing costs ($10.9 to 14.4 million at the current exchange rate, or $5,450 to $7,200 per firm). *See* FSA Consultation Paper 06/9, Organisational Systems and Controls: Common Platform for Firms, Annex 2 (May 2006).

[105] NERA, Cost-Benefit Analysis of the CFTC's Proposed Swap Dealer Definition Prepared for the Working Group of Commercial Energy Firms, December 20, 2011. In the late-filed comment supplement, NERA estimates these costs for entities ''engaged in production, physical distribution or marketing of natural gas, power, or oil that also engage in active trading of energy derivatives''—termed ''nonfinancial energy companies'' in the report. The figure cited includes costs to maintain a risk management program, quarterly audits of the program, and annual audits of swap trading relationship documentation, the last of which is required under a separate rulemaking proposal not being adopted in this release.

[106] *See* Position Limits for Futures and Swaps, 76 FR 71626, 71667 (Nov. 18, 2011).

[107] These costs would likely be lower for firms with positions far below the speculative limit, as those firms may not need comprehensive, real-time analysis of their swaps positions for position limit compliance to observe whether they are at or near the limit. Costs may be higher for firms with very large or very complex positions, as those firms may need comprehensive, real-time analysis for compliance purposes. Due to the variation in both number of positions held and degree of sophistication in existing risk management systems, it is not feasible for the Commission to provide a greater degree of specificity as to the particularized costs for SDs and MSPs.

[108] NERA, Cost-Benefit Analysis of the CFTC's Proposed Swap Dealer Definition Prepared for the Working Group of Commercial Energy Firms, December 20, 2011. *See also* text accompanying note 103 for a discussion of these figures.

[109] Although the rules were adapted from existing risk management guidance from a variety of sources

Continued

Commission's review of applicable academic literature yielded no research reports or studies directly relevant to its considerations of costs of the final rules. Moreover, because it largely refrained from establishing prescriptive requirements under § 23.600—requiring certain policies and procedures while leaving their design and formulation to the discretion of each individual registrant—the Commission believes that many of the costs associated with the rules will be highly specific to each entity, and thus difficult to quantify for an individual firm or on an aggregated basis. Certain of the costs associated with these rules addressing duties and risk management requirements of SDs and MSPs result from collections of information subject to the Paperwork Reduction Act. Costs attributable to collections of information subject to the PRA are discussed further in section V.B.2. below. The Commission has also considered these costs, which it incorporates by reference herein, in its section 15(a) analysis.

Benefits

The Commission believes that the central, driving role of SDs and MSPs in swaps markets—markets that can be systemically critical as recent events have shown—requires that SDs and MSPs give due regard to, and properly manage, the risks they incur as part of their day-to-day businesses. The impact of an SD or MSP default may be greater than the impact to the entity alone, and of potentially profound significance to the financial system broadly. Given this, the Commission believes these regulations prescribing internal risk management requirements better assure the protection of market participants and the public.

In promulgating the regulations governing the duties of SDs and MSPs, the Commission has created a framework that requires proper internal oversight but also ensures that these participants retain the flexibility to comply in the manner best suited for their individual needs. While the Commission recognizes that the costs incurred by participants to comply with these regulations may be significant, the Commission also believes that the strength of critical market participants like SDs and MSPs is a vital component in the strength of the financial system as a whole. By requiring entities to monitor the risks arising from their operations actively and rigorously, the Commission believes that an entity's default risk will decrease substantially. Should an emergency situation—such as a natural disaster—occur, the largest derivatives market participants will have systems in place to resume full operation within one business day, mitigating the effects of a major crisis for the financial system as a whole. The Commission also recognizes that, given the systemic importance of these entities, ensuring proper risk management within SDs and MSPs helps to protect the public against major market disruptions and financial losses.

In addition, the registrants will benefit from the required oversight of their internal operations. The required monitoring is designed to protect an entity from ''rogue'' or unauthorized trading. Further, the required monitoring of applicable position limits protects the entity from an unforeseen violation that could lead to, among other things, an enforcement action from an exchange or the Commission. Moreover, the regulations require identification and monitoring of several different kinds of risk, allowing entities to realize and correct potential issues before problems (and associated costs) escalate. Finally, the stability of any entity rests on its ability to manage the risks inherent in its business; by requiring stringent internal oversight, the Commission believes these regulations will aid in the growth and competitiveness of SDs and MSPs by ensuring the stability that flows from the most basic forms of risk management.

Section 15(a) Determination

1. Protection of Market Participants and the Public

The Commission believes that requiring prudent risk management policies and procedures lessens the risk of market disruptions and financial losses that could greatly impact not only a particular SD or MSP, but also other market participants and the public at large. The Commission also believes that requiring entities to assess and monitor their level of risk, as well as the adequacy of their own risk management policies and procedures, helps to: (i) Protect the entity from undue impacts from unanticipated market events, (ii) ensure swift recovery after a disaster or other emergency, and (iii) promotes the stability of the entity. The business practices of SDs and MSPs are of critical importance to the integrity and stability of the derivatives markets; this makes proper oversight and risk mitigation essential to the well-being of the financial system.

The Commission does not believe that the costs associated with these rules will have a detrimental effect on the protection of market participants or the public. It is possible that the costs associated with these rules will require that SDs and MSPs modify their business decisions in order to allocate more resources to risk management, monitoring traders, business continuity, and diligent supervision of personnel.

2. Efficiency, Competitiveness, and Financial Integrity of Markets [110]

The Commission believes that effective internal risk management and oversight helps protect the financial integrity of individual SDs and MSPs. Their financial integrity, in turn, promotes the financial integrity of derivatives markets by helping to foster confidence in the stability of the financial system. Further, the regulations are designed to ensure that SDs and MSPs can sustain their market operations and meet their financial obligations to market participants, further protecting the financial integrity of derivatives markets. Additionally, the Commission believes that these regulations, as carefully tailored to minimize costs beyond those required by the statute, will enhance the efficiency and competitiveness of markets to the extent that SDs and MSPs have sound risk management programs and proper monitoring of traders. Monitoring traders to ensure that they do not engage in manipulative or other disruptive market behaviors is crucial to the efficiency of markets.

3. Price Discovery

The Commission has identified no likely material impact on price discovery from the costs and benefits of these duties and risk management rules.

4. Sound Risk Management

The regulations go to the heart of sound risk management for key market participants and for the swaps market generally. The rules require SDs and MSPs to establish policies and procedures for: (i) Monitoring and managing traders and all risks associated with their swaps activities, including market, credit, liquidity, foreign currency, legal, and operational risk; (ii) business continuity planning, and (iii) diligent supervision. Such policies and procedures will ensure that the largest derivatives market

including the Federal Reserve and the OCC, such guidance has been built up incrementally over a period of time and the overall costs of compliance with such guidance has not been quantified.

[110] Although by its terms section 15(a)(2)(B) of the CEA applies to futures markets only, the Commission finds this factor useful in analyzing regulations pertaining to swaps markets as well. The Commission has identified no impact to futures markets.

participants understand the risks associated with their swaps activities, take steps to mitigate those risks when appropriate, and are prepared for managing crisis situations. In essence, these rules create risk management benefits by working to prevent SDs and MSPs from having to default on their financial obligations, potentially threatening overall financial stability in the process.

The costs associated with these rules will likely require that SDs and MSPs allocate more resources to risk management, monitoring traders, business continuity, and diligent supervision of personnel. The Commission does not foresee that the allocation of these additional resources will have a detrimental effect on sound risk management.

5. Other Public Interest Considerations

The Commission has not identified any other public interest considerations that could be impacted by these duties and risk management requirements for SDs and MSPs.

F. Conflicts-of-Interest Policies and Procedures for SDs, MSPs, FCMs, and IBs

Section 4s(j) of the CEA, as added by section 731 of the Dodd-Frank Act, sets forth certain duties for SDs and MSPs, including the duty to implement conflict-of-interest systems and procedures. Specifically, section 4s(j)(5) mandates that SDs and MSPs implement conflict-of-interest systems and procedures that establish safeguards to ensure that research activities and the provision of clearing services are separated by appropriate informational partitions from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision. Section 4s(j)(5) further requires that such systems and procedures ''address such other issues as the Commission determines to be appropriate.'' The proposed regulations, as set forth in the SD/MSP Conflicts NPRM, addressed the statutory mandate of section 4s(j)(5).

Similarly, section 732 of the Dodd-Frank Act amended section 4d of the CEA by creating a new subsection (c), which mandates that the Commission ''require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures.'' New section 4d(c) mandates that such systems and procedures establish firewalls between research and trading or clearing. New section 4d(c) further requires that such systems and procedures ''address such other issues as the Commission determines to be appropriate.'' The proposed regulations, as set forth in the FCM/IB Conflicts NPRM, addressed the statutory mandate of section 4d(c).

As described in detail in the preamble, the Commission, in preparing these final rules, sought and incorporated comment from the public. In the SD/MSP Conflicts NPRM and the FCM/IB Conflicts NPRM, the Commission requested comment on the Commission's consideration of costs and benefits and invited commenters to provide data quantifying the costs and benefits of the proposed regulations.[111] The Commission received 29 comment letters to the SD/MSP Conflicts NPRM and 26 comment letters to the FCM/IB Conflicts NPRM. Many commenters provided comments addressing identical provisions or issues in both proposed rules. The Commission considered each in formulating the final rules, including any alternatives and cost concerns. Of the comment letters received, 21 letters addressed issues relevant to the costs and benefits of the proposed rules, but no letters provided any quantitative data to support their claims.

With regard to the conflicts provisions, the comment letters focused on 16 areas of the rule that are most relevant to the Commission's consideration of costs and benefits. Each of these areas is discussed below. A more detailed discussion can be found in section II.M. above.

1. Compliance Oversight by SROs

The Commission declines the recommendation of commenters[112] to delegate conflicts of interest oversight to an SRO because sections 4d(c) and 4s(j)(5) of the CEA direct the Commission exclusively to promulgate such rules. In this regard, the CEA differs from section 15D of the Securities Exchange Act of 1934, which mandates that conflict-of-interest rules be adopted either by the SEC or by an SRO. Therefore, the cost savings that the commenters asserted would result from the delegation of oversight and rulemaking authority to an SRO are in fact not an option that the Commission may consider under the statutory framework provided by the Congress.

2. Non-Research Personnel

EEI argued that the Commission should limit the definition of non-research personnel[113] to only those persons involved with trading, pricing, or clearing activities because implementing the restrictions on communications between research analysts and all non-research personnel as the proposed rule more broadly defined the term will be burdensome. Sections 4d(c) and 4s(j)(5) of the CEA require informational partitions between research analysts and persons involved in pricing, trading, or clearing activities. The Commission recognizes that extending the requirement for informational partitions above the statutory minimum to all non-research personnel may cause registrants to experience some incremental cost increase, though EEI did not provide any quantification. Notwithstanding this, however, the Commission is adopting the definition as proposed because it believes doing so closes a significant window that could be exploited to evade the statutory purpose—i.e., to ensure that research reports published by registrants are free from bias. The Commission believes that informational partitions only between research analysts and persons involved in pricing, trading, or clearing activities are unlikely to ensure that research reports are free from bias because other personnel may have similar motives for influencing the content of research reports, or may be subject to the influence of pricing, trading, or clearing personnel and thus present an avenue of indirect influence on research personnel. The Commission observes that the definition and use of the term ''non-research personnel'' was adapted from NASD rule 2711, which also prohibits all non-research personnel from reviewing or approving a securities research report prior to publication.[114] Thus, despite some potential

[111] *See* SD/MSP Conflicts NPRM, 75 FR at 71395 and FCM/IB Conflicts NPRM, 75 FR at 70157.

[112] FIA, ISDA, SIFMA, and JP Morgan suggested that the Commission instruct an appropriate SRO to write detailed compliance requirements within a framework set forth by the Commission because SROs would be in a better position than the Commission to address the likely need for future amendments to the rule. The Commission presumes that the commenters believe that this alternative arrangement would streamline compliance requirements resulting in cost savings. The Commission notes, however, that the comments of Michael Greenberger and UNITE HERE supported monitoring and enforcement of the implementation of conflict-of-interest policies and procedures by the Commission, as opposed to SROs.

[113] The proposed rule defined the term ''non-research personnel'' as ''any employee of the business trading unit or clearing unit, or any other employee of the [SD] or [MSP] who is not directly responsible for, or otherwise involved with, research concerning a derivative, other than legal or compliance personnel.''

[114] *See* NASD rule 2711(b)(2) (stating ''no employee of the investment banking department or any other employee of the member who is not directly responsible for investment research ('non-research personnel'), other than legal or compliance personnel, may review or approve a research report of the member before its publication'').

incremental cost to registrants, the Commission believes that ensuring unbiased registrant research reports accords with statutory intent and justifies the increased burden.

3. Public appearances by research personnel

The proposed rules defined the term ''public appearance'' as ''any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons * * *.'' FIA, ISDA, and SIFMA argued that the definition of public appearance should articulate that the term ''person'' includes both a customer that is a natural person and one that is an entity. The Commission presumes these commenters to be concerned that requiring public-appearance disclosures when the 15-person threshold is crossed due to attendance by multiple representatives of one entity increases the disclosure burden with no attendant increase in benefit. The Commission agrees and is modifying the rule accordingly.

4. Research department

FIA, ISDA, and SIFMA, in a joint comment, objected that the imposition of the rule's restrictions to research departments [115] of global affiliates would create logistical difficulties and expense for multinational firms; this impact was not quantified by the commenters. FIA, ISDA, and SIFMA suggested that the Commission limit the rules to requiring disclosure ''on third party research reports.'' The Commission believes that the rule helps ensure that the research reports produced by or on behalf of an SD, MSP, FCM, or IB, on which consumers may rely in making investment or risk management decisions, are not biased in favor of the financial interest of the SD, MSP, FCM, or IB—a benefit. This, in turn, promotes consumer confidence in such reports—another benefit. Therefore, because it believes that the alternative suggested by FIA, ISDA, and SIFMA would be unacceptably porous and invite evasion by registrants that move their research function to an affiliate, the Commission is adopting the rule as proposed. The Commission believes that ensuring that the intended benefits of the rule are not depleted through evasion justifies any incremental cost of extending the rule to affiliates of registrants. In addition, the Commission believes that the increased costs are not as significant as posited by the commenters. A registrant need not examine the research functions of all of its affiliates under these rules; rather, the rules only require that a registrant apply the informational partitions of the rules to those research groups doing research on behalf of an SD, MSP, FCM, or IB.

5. Research Report

As proposed, the definition of the term ''research report'' expressly excluded four categories of communications from coverage. After considering the comments received, the Commission is expanding the list of exclusions as recommended to include ''commentaries on economic, political or market conditions'' and ''statistical summaries of multiple companies' financial data, including listings of current ratings.'' As modified, the Commission believes the rule strikes a reasonable balance between the need to identify research reports on which an investor or risk manager may rely in making a decision to enter into a swap or other derivative that may also be subject to potential bias in favor of the financial interest of an SD, MSP, FCM, or IB, and those research reports on which an investor or risk manager may rely, but that are not likely to be subject to such bias. The benefits of the rule as modified are that the rules foster less biased research reports without burdening registrants with unnecessary restrictions on those research reports that, by their nature, are not likely to be subject to bias. To maintain these benefits, the Commission declines to broaden the definitional exclusion as suggested by commenters [116] to communications the Commission believes could represent the core focus of a research department—e.g., asset classes, economic variables commonly referenced in derivatives, and on-the-run swap rates—and thus be susceptible to bias.

6. Conflicts of Interest Adequately Addressed by Existing Commission and NFA Rules; FCM *de minimis* Exception

NFA commented that existing NFA rules address issues raised in proposed § 1.71, and that the rule could have unintended consequences. K&L Gates LLP (on behalf of Peregrine Financial Group Inc.), ADM Investor Services Inc., John Stewart & Associates Inc., and Stewart-Peterson Group Inc. each agreed with NFA that existing rules of NFA and the Commission are sufficient, and thus the additional compliance costs imposed by the rules are not justified.

The Commission believes that sections 4d(c) and 4s(j)(5) of the CEA require registrants to institute safeguards beyond what has been previously required in the rules of the Commission and NFA, and, accordingly, is adopting the rule substantially as proposed. For example, the statutory provisions require ''structural and institutional safeguards'' to ensure that research and trading functions are ''separated by appropriate informational partitions,'' a requirement not imposed by existing NFA or Commission rules. Thus, to the extent institution of these additional safeguards incur added costs, these are attributable to the statutory requirements imposed by Congress. Moreover, by providing specificity under the rules with respect to the conflict-of-interest requirement and by maintaining consistency with NASD Rule 2711, the Commission believes that the rule will minimize disruption to the market and minimize the additional compliance costs required by the CEA because the rules rely on well-established standards.

7. FCM *de minimis* Exception

Newedge commented that FCMs engaging in minimal proprietary trading should not be subject to the burdens of the rule relating to research analysts because such a firm does not present a risk of conflicts of interest. Again, the Commission notes that sections 4d(c) and 4s(j)(5) of the CEA require registrants to institute ''structural and institutional safeguards'' to ensure that research and trading functions are ''separated by appropriate informational partitions,'' and that neither of these sections makes an allowance for a de minimis amount of trading or research. Thus, the Commission cannot adopt the alternative approach suggested by Newedge because the imposition of a de minimis exception to the conflicts rule

[115] The proposed rules defined the term ''research department'' as ''any department or division that is principally responsible for preparing the substance of a research report relating to any derivative * * * including a department or division contained in an affiliate * * *.''

[116] FIA, ISDA, and SIFMA argued for the expansion of the exclusions that the Commission has accepted. FIA/ISDA/SIFMA further argued that communications produced by a business trading unit labeled as a ''trading/sales desk product'' and as ''non-research'' should be excluded from the definitions of research report. In a separate comment, JP Morgan expressed a general agreement with the points raised in the FIA/ISDA/SIFMA letter. EEI argued that the Commission should exclude from the definition any communication between an SD or MSP, and its regulator, concerning hedging activity because firms with small trading operations should be permitted to publish occasional research reports to justify trading decisions, without being subject the proposed rules. NFA also argued that the definition in proposed § 1.71(a)(9) was too broad and suggested that the definition be limited in a number of ways similar to NASD Rule 2711. Newedge also argued that the definition was too broad and suggested a more narrow definition of research report.

is inconsistent with the statutory directive that Congress set forth. Moreover, the Commission does not believe that the limited nature of a firm's proprietary trading negates the issues intended to be addressed through the statutory mandate because a firm engaged in trading solely on behalf of customers can increase its commissions by encouraging an increase in trading activity through research reports.

8. Small IB Exception

In the FCM/IB Conflicts NPRM, the Commission invited comment on how the proposed rules should apply to FCMs and IBs, considering the varying size and scope of the operations of such firms. A number of commenters requested relief for small IBs on grounds that the burden to them would be high and could discourage them from providing research to the detriment of customers seeking to hedge commercial risk.[117] Given the mandate of section 4d(c) of the CEA to establish ''appropriate informational partitions'' within all FCMs and IBs, the Commission is not able to exempt small firms from the statutory requirements.

The Commission, however, recognizes that an IB's size is a significant factor in determining the ''appropriateness'' of the informational partitions required by section 4d(c). Thus, in light of the burden to small IBs and the attendant loss of research benefits for consumers that could result, the Commission has modified § 1.71(b) to set forth a separate policies and procedures requirement for small IBs designed to provide them greater flexibility in determining the appropriate informational partitions required under their own circumstances.[118]

9. Restriction on Non-Research Personnel From ''Influencing the Content'' of Research Reports

The proposed rules provided that non-research personnel shall not influence the content of a research report. In response to commenters' concerns that the proposed standard was unnecessarily broad and would tend to chill all communications, including those beneficial to research integrity, between research and non-research personnel, the Commission is modifying the rules in line with suggested alternatives to provide instead that non-research personnel shall not direct the views and opinions expressed in a research report.[119] The Commission believes that accepting this change will reduce the compliance burden of registrants because it directs compliance efforts toward ensuring that the views and opinions expressed in research reports are those of the research analyst, rather than attempting to prohibit all influence.[120]

10. Restriction on Research Analyst Supervision by Business Trading Unit or Clearing Unit

The proposed rules prohibited (1) supervision or control of a research analyst by any employee of the registrant's business trading unit or clearing unit, and (2) influence or control over the evaluation or compensation of a research analyst by personnel engaged in pricing, trading, or clearing activities. The intent of the rules is to foster research free of bias that may result from research analysts' expectation of increased compensation for producing research reports favorable to the financial interests of personnel in the business trading unit or clearing unit—a benefit.

FIA, ISDA, and SIFMA recommended—presumably on the basis that requiring a separate reporting line adds to the compliance burden—that the restriction only apply to direct supervision of research analysts, and not to others further up the management chain. No commenter provided quantitative information with respect to the costs of such burden. The Commission believes that it has resolved the concerns of commenters through (1) changes to the definitions of ''business trading unit'' and ''clearing unit'' discussed in section II.M above, and (2) using those definitions to designate personnel who may not have influence or control over the evaluation or compensation of a research analyst. As modified, the definitions reach only those performing certain functions in the unit and those supervising the performance of those functions. The Commission believes the threat to research analyst independence that would result from permitting supervision by any member of the business trading unit or clearing unit, as defined in the final rules, justifies adopting the rule as proposed.

11. Requirement That Legal/Compliance Personnel Supervise Communication Between Research and Non-Research Personnel

The proposed rules permitted non-research personnel to review a research report before its publication for limited purposes, such as verifying factual accuracy. Such review: (1) May only be conducted through authorized legal or compliance personnel, and (2) must be properly documented. In this respect, the rules maintain consistency with NASD Rule 2711 and the Commission believes that such consistency will minimize compliance costs because the rules rely on well-established standards. In addition, the Commission notes that the benefit of this provision is that it maintains the independence of the views and opinions expressed in research reports while improving the accuracy of such reports. The rules accomplish these benefits by balancing the need for some review of research reports by non-research personnel, while ensuring the review is limited in scope by requiring the presence of legal or compliance personnel.

EEI recommended that the Commission exempt communications that are factual in nature from oversight by legal and compliance personnel, arguing that such oversight unnecessarily burdens legal/compliance personnel. EEI did not further qualify or quantify the costs implicated by the proposed exemption. Upon consideration of the alternative's cost/benefit ramifications, the Commission determined to adopt the rule as proposed. The Commission finds the suggested alternative unacceptable for several reasons. First, the Commission does not believe that registrants will be able to distinguish easily

[117] NFA, National Introducing Brokers Association, ADM Investor Services Inc., John Stewart & Associates Inc., and Stewart-Peterson Group Inc. each argued that implementing the proposed rules would be prohibitively costly, burdensome, and unnecessary for small IBs, particularly for IBs dealing with agricultural commodities where the IB may have only a few employees engaged in both research and trading for customers, and would force an unspecified number of small IBs out of business. Chris Barnard noted that small IBs lack the capacity to carry the proportionately heavier regulatory burden set forth in the proposed rule, and as such, some regulatory mitigation would be beneficial based on number of staff or revenues. Multiple commenters also commented on the limited market price impact of research reports created or distributed by small IBs.

[118] The threshold to qualify for this small IB alternative is $5 million or less in aggregate gross revenues generated over the preceding 3 years from activities as an IB. This approach is similar to that taken in NASD Rule 2711 and was raised as a possible alternative in the preamble of the proposed rule.

[119] FIA, ISDA, SIFMA, and JP Morgan argued that the proposed prohibition on ''influencing the content'' should be eliminated because it would impair ordinary communications between research and non-research personnel. As an alternative, FIA/ISDA/SIFMA suggested that non-research personnel should be prohibited only from ''directing the views and opinions expressed in research reports.'' Better Markets argued that the rules should be expanded to include any decision not to publish a report or to refrain from including relevant information.

[120] The Commission further modified the rules in response to commenters to provide that non-research personnel shall not direct a research analyst's decision to publish a research report. The Commission believes this is a burden-neutral modification to provide clarification, however.

communications that are ''factual in nature'' from those that are not, likely resulting in more uncertainty and needed review by legal and compliance personnel, not less. In addition, the Commission believes that allowing for communications that are merely ''factual in nature'' opens an avenue for evasion that could undermine the rules' intended benefits.

12. Restrictions on Research Analyst Communications

The proposed rules provided that a research analysts' written or oral communication relating to any derivative must not omit any material fact or qualification that would cause the communication to be misleading to a reasonable person. The requirement, as proposed, applied to external communications to a current or prospective counterparty as well as internal communications to any employee of the registrant. The Commission intends the rules to promote research report integrity—i.e., help ensure that reports are both unbiased in favor of a registrant's financial interests and factually accurate in material respects. The Commission anticipates that the cost attendant to achieve the accuracy component of this intended benefit is any increased time a registrant spends ensuring that research analysts' reports are free of material misleading inaccuracies.

FIA, ISDA, SIFMA, and JP Morgan commented that the proposed rule would materially burden an affected firm's operations because it applies to internal communications as well as external communications. Upon consideration of the potentially significant cost of including internal communications relative to the limited gain in intended benefits, the Commission is modifying the rules to exclude communications with employees of the registrant from the requirement.

13. Restriction on Influence of Business Trading Unit and Clearing Unit on Research Analyst Compensation

Proposed §§ 23.605(c)(3) and 1.71(c)(3) precludes (1) a registrant from considering a research analyst's contribution to the trading or clearing business as a factor in his or her compensation review or approval, and (2) a review or approval role for business trading or clearing unit personnel with respect to a research analyst's compensation. As articulated above, the Commission believes that the benefit of unbiased research flows directly from a research analyst's independence, which is compromised if the analyst's compensation is subject to business trading or clearing unit influence.

The Commission recognizes that the rule, to some incremental extent, may add to compliance costs, although no commenter specifically articulated or quantified this impact. After considering the comments received,[121] the Commission has determined to revise the proposed rule to relieve the compliance burden by permitting communications to research department management relating to client or customer feedback, ratings, and other indicators of a research analyst's performance. The Commission does not believe that this relaxation will negatively impact research independence. The Commission declines to further modify the rule, however, based on its belief that maintaining a firewall around research analyst compensation decisions is crucial to implementing effective conflict-of-interest policies and procedures and ensuring the benefits of unbiased research reports. The Commission also confirms that the rule does not prohibit compensation decisions from being subject to non-discriminatory and non-prejudicial firm-wide compensation guidelines.

14. Disclosure of Conflicts by Research Analysts in Research Reports and Public Appearances; Disclosure of Conflicts in Third-Party Research Reports

Proposed §§ 23.605(c)(5)(i) and 1.71(c)(5)(i) required certain disclosures in registrants' research reports and at research analysts' public appearances. Specifically, it required disclosure of whether the analyst that prepared the report or makes the appearance maintains, from time to time, a financial interest in the types of derivatives that the analyst follows, the general nature of such interest, and any other material conflicts of interest of which the research analyst has knowledge. Additionally, as proposed, §§ 23.605(c)(5)(iv) and 1.71(c)(5)(iv) required that, if a registrant distributes or makes available third-party research reports, each report be accompanied by certain disclosures pertinent to conflicts of interest. The required disclosures benefit consumers of research reports produced by SDs, MSPs, FCMs, and IBs because they alert the consumers of such reports to interests that may influence the content of such reports, allowing the consumer to make an independent judgment as to their value.

Several commenters recommended changes that could lessen the incremental (though unquantified) compliance costs of the rule by curtailing the required disclosures.[122] The Commission has considered these comments and has determined that the benefits of the rule will be maintained without subjecting registrants to the burden of determining and disclosing financial interests that are maintained ''from time to time.'' Thus, the Commission is modifying the language of §§ 23.605(c)(5) and 1.71(c)(5) to remove the phrase ''from time to time,'' such that a research analyst need only disclose whether she maintains a relevant financial interest at the time of publication of the report or the time of a public appearance. However, the Commission is not adopting a de minimis exception, due to the difficulty of deciding when a financial interest is *de minimis* in this context. A *de minimis* exception would require a registrant to determine the threshold point at which a financial interest poses a threat of conflicts of interest—a nebulous standard; such determination is likely to increase the costs of compliance of the rule over the cost that would be incurred to simply disclose all financial interests.

Commenters also raised concerns regarding the burden of required disclosures when distributing research reports produced by a third-party.[123] The Commission considered the burden of disclosure in this context in light of maintaining the benefit of disclosure of information necessary for consumers to judge the content of research reports. The Commission has determined not to modify the rule in regard to third-party research disclosures. It believes that

[121] FIA, ISDA, SIFMA, and JP Morgan contended that research management should be able to solicit input from business trading and clearing unit personnel concerning the performance of research personnel. FIA/ISDA/SIFMA, as well as Newedge, further argued that research management decisions should be subject to firm-wide compensation guidelines. By contrast, Michael Greenberger argued that research management should be prohibited from soliciting any input of business trading and clearing units concerning a research analyst's compensation or performance evaluation, even if the influence is indirect or if research management maintains the ability to make all final decisions on such determinations. Better Markets commented that the provision should be broadened.

[122] FIA, ISDA, and SIFMA argued that §§ 23.605(c)(5)(i) and 1.71(c)(5)(i) should be limited to disclosing whether a research analyst maintains a relevant financial interest at the time of publication of the report/time of public appearance, rather than ''from time to time'' as provided in the rule. EEI suggested that the Commission modify the proposed rule to provide a de minimis exception to the disclosure requirements, such that a research analyst should be required only to identify relevant financial interests.

[123] FIA, ISDA, SIFMA, JP Morgan, and EEI argued that the required disclosures with respect to third-party research reports are unnecessary because third-parties are, by definition, independent.

third-party research reports distributed by a registrant may be interpreted as carrying the endorsement of the registrant and thus may present conflicts-of-interest issues in the same way as research reports originating with the registrant's own research analysts; accordingly, the same level of disclosure is appropriate.

Finally, commenters also contended that the phrase ''any other actual, material conflict of interest of the research analyst'' is vague and would be burdensome to implement, requiring coordination among various business units and the creation of special databases in order to comply with the rule. The Commission believes that the cost concerns of commenters are misplaced in this regard. The rules require disclosure of ''any other actual, material conflicts of interest of the research analyst or [SD, MSP, FCM, or IB] of which the research analyst *has knowledge* at the time of publication of the research report or at the time of the public appearance'' (emphasis added). Thus, the disclosure requirement is limited to conflicts of which the research analyst has knowledge, and the SD, MSP, FCM, or IB need not construct the databases suggested by commenters in order to comply with the rule.

15. Separation of Clearing Unit From Business Trading Unit

As proposed, § 23.605(d) and § 1.71(d) prohibited interference by an SD or MSP with the decisions of clearing members, including FCMs, regarding the provision of clearing services and activities. The proposed rules also required informational partitions between business trading units and clearing member personnel. In addition, the proposals prohibited any employee of a business trading unit from supervising or controlling any employee of a clearing member. The Commission believes the benefits of the rules are that, to the extent practicable, the rules protect fair and open access to clearing by ensuring that decisions to accept clearing customers are not motivated solely by considerations of trading profits.

Commenters raised a number of cost concerns related to operation of the rule, as follows:

- Sales personnel should be able to act for both the trading unit and the clearing unit to offer a full range of services to customers efficiently; [124]
- The rules will impair a registrant's ability to follow risk management best practices by requiring independent risk assessments in the trading unit and clearing unit for the same counterparty, rather than a consolidated risk assessment; [125]
- The rule should be limited to prohibiting a trading unit from obtaining information about the transactions or positions of customers of the clearing unit; [126]

No commenter provided any quantitative information regarding the expected costs of complying with the rules.

Having considered the costs of compliance as presented by commenters in light of the benefits of open access to clearing, the Commission has determined it appropriate to promulgate the rules largely as they were originally proposed. Despite the varying incremental costs of any needed corporate structure reorganization and instituting informational partitions, the Commission believes the separation of the FCM clearing unit from the interference or influence of an affiliated SD or MSP is crucial to promoting open access to clearing and securing the benefits to market participants and the stability of the financial system itself expected to follow from increased central clearing.[127] Open access to clearing will be essential for the expansion of client clearing needed for market participants to comply with the mandatory clearing of swaps as determined by the Commission under section 723 of the Dodd-Frank Act. Specifically, the Commission does not believe that the rule language should be changed to permit sales personnel to act for both the trading unit and the clearing unit. The risks associated with this approach, in terms of potential undue influence and interference with clearing decisions, has been well-supported by commenters.[128]

However, in response to commenters' concerns about an FCM's ability to manage a default scenario without the benefit of the trading expertise in the business trading unit, the Commission is modifying proposed § 1.71(d)(2)(i) to permit the business trading unit of an affiliated SD or MSP to participate in the activities of an FCM during an event of default. Specifically, the business trading unit personnel would be permitted to participate in the activities of the FCM, as necessary, during any default management undertaken by a derivatives clearing organization and for the purposes of transferring, liquidating, or hedging any proprietary or customer positions as a result of an event of default.

16. Undue Influence on Customers

As proposed, § 1.71(e) required that FCMs and IBs adopt and implement written policies and procedures that mandate the disclosure of any material incentives and any material conflicts of interest regarding the decision of a customer as to trade execution and/or clearing of a derivatives transaction. Proposed § 23.605(e) mandated that SDs and MSPs adopt policies and procedures requiring disclosure to counterparties of any material incentives and conflicts of interest regarding the decision of a counterparty: (1) Whether to execute a derivative on a swap execution facility or designated contract market; or (2) whether to clear a derivative through a derivatives clearing organization. The Commission believes that the rules benefit counterparties by ensuring that they are adequately informed of any material incentives or conflicts prior to the execution of a transaction, and benefit the market by promoting the efficient use of trading facilities and clearing for swap transactions.

Some commenters objected to the rule on the grounds that existing Commission regulations already impose risk disclosure requirements on FCMs and IBs. FIA, ISDA, SIFMA, and JP Morgan argued that the Commission could reduce the burden of the rules by

[124] FIA/ISDA/SIFMA and JP Morgan argue that sales personnel should be permitted to act for both units. UBS Securities LLC also argued that the rule inhibits the ability of a financial services firm to operate its swap clearing business as a partnership with its trading business in order to serve clients. Similarly, the FHLBs argued that the proposed rule overly restricts the ability of SDs and MSPs to run their trading and clearing operations and effectively serve the needs of their end-user counterparties.

[125] FIA/ISDA/SIFMA and the FHLBs argued that the proposed rules would impair an SD's/MSP's ability to follow risk management best practices. NFA commented that § 1.71(d) is too broad and may negatively impact a firm's ability to share information about customers to make credit and risk determinations.

[126] FIA/ISDA/SIFMA recommended that the Commission not adopt the proposed rules, but instead adopt a rule that prohibits an affiliated SD or MSP from obtaining information from an affiliated FCM's clearing personnel concerning transactions conducted by FCM clients with either their own clients or with independent SDs or MSPs.

[127] In September 2009, the G–20 Leaders agreed in Pittsburgh that ''all standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest.''

[128] MFA and Pierpont Securities Holdings LLC commented that they support the Commission's proposals. Swaps and Derivatives Market Association contended that that the restrictions correctly address key areas where conflicts arise, and that the independence of clearing members is essential to accomplish several policy goals of the Dodd-Frank Act. Michael Greenberger also expressed support for § 23.605(d), noting that attempts to tie clearing decisions to trade execution decisions would raise potential conflicts of interest, which could serve to block access to clearing and prevent competition among execution venues.

requiring SDs and MSPs to provide customers with an annual disclosure document describing potential conflicts that may exist among the firm, its affiliates, clients, and employees.

After considering costs of compliance with the rule in light of the benefits outlined above, and the underlying statutory requirements, the Commission has determined it appropriate to adopt the rules as originally proposed. The Commission believes that the disclosure of conflicts of interest in this context are materially different from the risk disclosures required of FCMs and IBs under existing Commission regulations and, therefore, existing regulations are inadequate to secure the benefits of the rule outlined above. In addition, the Commission notes that the rule does not prohibit an SD or MSP from providing its customers with an annual disclosure document, and the Commission confirms that such would be permitted assuming that such document is sufficient to meet the requirements of the rule.

Costs

Sections 4d(c) and 4s(j)(5) of the CEA require FCMs, IBs, SDs, and MSPs, to adopt and implement certain conflict of interest systems, procedures and safeguards, including research firewalls. The costs and benefits that necessarily result from these basic statutory requirements are considered to be the ''baseline'' against which the costs and benefits of the Commission's final rules are compared or measured. The ''baseline'' level of costs includes the costs that result from the following activities required by the statute:

- FCMs and IBs must establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons.
- SDs and MSPs must establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in the CEA.
- SDs and MSPs must establish structural and institutional safeguards to ensure that the activities of any person within the firm acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in the CEA.

Compliance with the statutory baseline alone would result in costs for FCMs, IBs, SDs, and MSPs. For example, the requirement to establish informational partitions would include the cost of identifying personnel involved in research or analysis of the price or market for any commodity or swap, identifying personnel involved in pricing, trading, or clearing activities, and designing and implementing communication policies and procedures.

Congress mandated that the Commission adopt rules to implement each of the statutory provisions. With regard to its implementation decisions, the Commission has determined the following to be potential costs to FCMs, IBs, SDs, and MSPs to comply with the final regulations regarding conflicts-of-interest policies and procedures:

- Identifying reports that qualify as research reports;
- Maintaining records of public appearances by research analysts; and
- Designing and implementing policies and procedures regarding:
- Legal or compliance participation in communications between research analysts and non-research personnel regarding the content of research reports;
- Oversight of research analyst communications regarding omissions of material facts or qualifications that would cause the communication to be misleading to a reasonable person;
- Communication of any client or customer feedback on research analyst performance from the business trading unit or clearing unit to research department management;
- Implementing the prohibition on promises of favorable research by research analysts;
- Discovering, monitoring, and disclosing financial interests maintained by research analysts;
- Implementing the prohibition on retaliation against research analysts;
- Implementing the prohibition of interference with or influence on decisions with regard to the provision of clearing services or activities; and
- Disclosing material incentives and conflicts-of-interest regarding exchange trading or clearing decisions by counterparties.

In adhering to its mandate from Congress, where possible the Commission has attempted to alleviate the burdens on affected entities. The Commission has narrowed the definitions of ''business trading unit'' and ''clearing unit'' to include fewer registrant personnel affected by the rules. The Commission has narrowed the definition of ''public appearance'' to include fewer appearances by research analysts that would require the disclosures mandated by the rules. The Commission has broadened the number of exclusions from the definition of ''research report'' such that there are fewer subject areas that would be covered by the rules. The Commission has provided a separate regulatory standard for small IBs that will lessen the compliance burden on such firms. The Commission also has narrowed the prohibition on non-research personnel involvement in producing content of research reports, and removed the need to police internal communications from research analysts for omissions of material facts or qualifications. The Commission has permitted trading and clearing units to provide client and customer feedback on research analyst performance to research department management and removed the need to determine and document financial interests of research analysts maintained ''from time to time'' for disclosure purposes. Finally, the Commission has permitted business trading unit personnel to participate in the activities of an FCM, as necessary, during any default management undertaken by a derivatives clearing organization and for the purposes of transferring, liquidating, or hedging any proprietary or customer positions as a result of an event of default.

Other than costs resulting from collections of information subject to the Paperwork Reduction Act, incorporated by reference herein, the Commission has no reliable quantitative data from which to reasonably estimate the costs of compliance with these conflict of interest rules.[129] No commenter provided any quantitative data on the costs of compliance with the rules as

[129] Although the rules were adapted from NASD rule 2711, that rule was promulgated by an SRO (now FINRA), which was not required to conduct a cost-benefit analysis of the rule prior to promulgation.

proposed. The Commission's review of applicable academic literature yielded no research reports or studies directly relevant to its considerations of costs of the final rules.

The Commission anticipates that many entities may currently have, pursuant to other regulation, the informational partitions required by the rules in place. The Commission notes that dually registered FCMs and BDs are more likely to have implemented such informational partitions under other regulatory regimes [130] than entities that are subject to such requirements for the first time. Costs, therefore, are expected to be higher for those entities not currently dually registered or not currently implementing conflicts of interest policies and procedures. Certain of the costs associated with these conflict of interest rules result from collections of information subject to the Paperwork Reduction Act. Costs attributable to collections of information subject to the PRA are discussed further in section V.B.3. below. The Commission has also considered these costs, which it incorporates by reference herein, in its section 15(a) analysis.

Benefits

The Commission believes that the proper informational partitions between research and trading and between clearing and trading, including restrictions on communications, supervision, and compensation oversight, help to ensure that research being released by SDs, MSPs, FCMs, and IBs and decisions related to trade execution and clearing are not tainted by inappropriate incentives. Because this research may be relied upon by a public that views such entities as experts in derivatives markets by virtue of their intimate knowledge of the products and markets, it is imperative that the information released therein is as accurate and free of conflicts of interest as possible. Similarly, because the importance of central clearing in derivatives markets necessitates free and open access to clearing, unrestrained by any potential conflicts of interest, it is imperative that access to clearing is not impeded by any inappropriate motivation. The rules adopted in this release require entities to establish appropriate policies and procedures to accomplish these benefits.

In addition, by ensuring that decisions on clearing activities remain separate from decisions relating to trade execution and other proprietary activities, the final regulations promote competitiveness in futures and swaps markets by ensuring open access to clearing. Central clearing is a pillar of derivatives reform initiatives, contributing heavily to the efficiency and safety of derivatives markets; barriers to clearing access may have an adverse effect on that efficiency and safety.

To the extent that a research report informs the financial investment in derivatives markets, protecting the integrity of that report aids in the protection of the financial integrity of markets.

Moreover, requiring registrants to disclose any potential conflicts of interest further affords the public the opportunity to make judgments regarding the information provided to them in the written reports and public appearances of research analysts. The Commission's mission to ensure fair and orderly markets relies in part on the transparency of certain market information, in order to provide potential investors the accurate information necessary to make informed decisions.

Section 15(a) Determination

1. Protection of Market Participants and the Public

The Commission believes that, as a result of these rules, market participants and the public are better protected from the potential harm that may occur when financial research reports are not insulated from the bias of registrants' own financial interests. This bias holds strong potential to operate as an incentive for registrants to produce and distribute research reports tainted by misleading, unbalanced, and/or inaccurate information. Such tainted reports, in turn, may induce market participants to engage in a financial transaction that they otherwise would not. Thus, the Commission believes that these regulations perform an important consumer protection function in the markets it regulates. While, in theory regulation could discourage some SDs, MSPs, FCMs, or IBs from making research reports public, the Commission believes the rules are carefully tailored to minimize costs beyond those required by the statute. The Commission also believes that SDs, MSPs, FCMs, and IBs likely will use research reports as a tool to differentiate themselves from competitors. In addition, the Commission believes that by insulating clearing services from pricing and trading bias, the regulations foster fair and open access to central clearing.

2. Efficiency, Competitiveness, and Financial Integrity of Markets [131]

The final rules promote the efficiency, competitiveness, and financial integrity of futures and swaps markets [132] by prohibiting an entity's trading personnel from manipulating research reports or otherwise biasing the information contained in research reports to their own financial advantage. To the extent the research produced by registrants is used to inform financial strategies, the integrity of that research is beneficial to the financial integrity of derivatives markets. The final rules strive to ensure the integrity of research performed by Commission registrants. Sound research also promotes market efficiency insofar as the increased dissemination of reliable, unbiased market information is acted upon by market participants in their decision-making. As discussed above, the Commission does not believe that the costs of these regulations, as carefully tailored to minimize costs beyond those required by the statute, will materially decrease market efficiency by leading to less sharing of relevant market information, particularly in light of the competitive incentives to do so.

Because the final rules promote fair and open access to central clearing, they also promote the financial integrity of derivatives markets—both futures and swaps markets. Greater access to central clearing ensures that more market participants will have the option to mitigate the counterparty credit risk that they face when entering into derivatives transactions. Protecting market participants from discrimination in the provision of clearing services will foster

[130] In this respect, the Commission observes that 55% of current FCMs are also registered as BDs with the SEC, and thus may already have informational partitions between research and trading as required under the rules of FINRA. *See* letter from NFA, dated Jan. 18, 2011 (comment file for 75 FR 70881 (Designation of a Chief Compliance Officer; Required Compliance Polices; and Annual Report of a FCM, SD, or MSP)). The Commission also notes that in 2003 the UK FSA conducted a cost benefit analysis when promulgating conflicts of interest rules and guidance with respect to investment research and issues of securities. The UK FSA concluded that because UK firms were required to comply with their existing statutory obligations including management of conflicts of interest when carrying out regulated activity, the ''total compliance costs relating to [the FSA's] new proposed rule and supporting guidance on objective investment research will be of no more than minimal significance.'' *See* FSA Consultation Paper 205, Conflicts of Interest: Investment Research and Issues of Securities, Annex 1 (October 2003); FSA Consultation Paper 171, Conflicts of Interest: Investment Research and Issues of Securities, Annex 5 (February 2003).

[131] Although by its terms CEA section 15(a)(2)(B) applies to futures markets only, the Commission finds this factor useful in analyzing regulations pertaining to swaps markets as well.

[132] Although by its terms CEA section 15(a)(2)(B) applies to futures markets only, the Commission finds this factor useful in analyzing regulations pertaining to swaps markets as well.

a competitive environment for the provision of clearing services and afford market participants greater choice in clearing members. While the Commission recognizes that some costs are attendant to the required firewall between trading and clearing, the Commission does not believe that these costs, as carefully tailored to minimize costs beyond those required by the statute, are sufficient to materially inhibit the provision of clearing services.

3. Price Discovery

To the extent that insulating research reports from registrant financial bias results in hedgers and investors making more accurately informed investment decisions, reported trade and transaction prices should better reflect the intrinsic value. This promotes the price discovery function of derivative markets. In contrast, where there is no check on the integrity of registrant research materials and market actors transact on the basis of misleading or inaccurate information, resulting prices may be distorted. Because the rules are carefully tailored to minimize costs, the Commission does not believe these rules will reduce liquidity to hinder price discovery.

4. Sound Risk Management

The final rules regarding informational partitions between clearing and trading will contribute to sound risk management because the separation of the FCM clearing unit from the interference or influence of an affiliated SD or MSP promotes open access to clearing. Open access to clearing will be essential for the expansion of client clearing needed for market participants to comply with the mandatory clearing of swaps as determined by the Commission under section 723 of the Dodd-Frank Act. The mandatory central clearing of swaps is one of the primary responses to the 2008 financial crisis, as central clearing is believed to promote sound risk management in the swap markets. While the Commission recognizes that some costs are attendant to the required firewall between trading and clearing, the Commission does not believe that these costs, as carefully tailored to minimize costs beyond those required by the statute, are sufficient to materially inhibit the provision of clearing services and the risk management benefit these services afford.

5. Other Public Interest Considerations

The Commission has not identified any other public interest considerations impacted by these conflicts-of-interest rules.

G. Designation of a Chief Compliance Officer, Required Compliance Policies, and Annual Report of an FCM, SD, or MSP

The CCO NPRM proposed several rules addressing chief compliance officer (CCO) designation and certain CCO requirements:

- Proposed § 3.3(a) codified the statutory requirements that each FCM, SD, and MSP designate a CCO and prescribed certain qualifications for the position.[133]
- Proposed § 3.3(d) codified the CCO duties defined in section 4s(k)(2) for SDs and MSPs, and extended their application to FCMs.[134]
- Proposed § 3.3([e])[135] codified the requirements of section 4s(k)(3) of the CEA for SDs and MSPs—i.e., that the CCO annually prepare and sign a report containing descriptions of: (i) The registrant's compliance with the CEA and regulations promulgated under the CEA, and (ii) each policy and procedure of the CCO, including the code of ethics and conflicts-of-interest policies—and extended their application to FCMs pursuant section 4d(d) of the CEA.

Of the 25 comment letters the Commission received on the CCO NPRM, 17 raised issues relevant to the consideration of the proposed rules' material costs and benefits; two of these provided some quantitative data relevant to costs and benefits.

The comments relevant to costs and benefits can be classified with respect to the following 10 aspects, each of which is discussed below.[136]

1. Decision To Extend Same Requirements to FCMs as SDs and MSPs

The Commission proposed uniform rules applicable to SDs, MSPs, and FCMs. After reviewing the comments received,[137] the Commission is adopting the same requirements for SDs, MSPs, and FCMs. The Commission recognizes commenters' concerns (though not substantiated with quantitative data) that subjecting FCMs to the same CCO requirements as applied to SDs and MSPs by section 4s(k) of the CEA (as codified in these rules) may increase costs for FCMs as compared to a less prescriptive approach. The Commission believes these costs may vary widely among FCMs, depending on the activities in which an FCM engages and the size and complexity of an FCM's operations.[138] Lacking quantitative information requested of commenters, the Commission has looked to public sources to estimate the boundaries of this range. In this regard, it finds the estimates contained in the SEC's 2003 published final compliance program rules for investment companies and investment advisers informative and, in lieu of FCM-specific information, a reasonable proxy for estimating an FCM compliance cost range.[139] The SEC estimated costs for developing a compliance program, depending on the manner chosen, ranging from $1,000 to $200,000.[140]

Notwithstanding these costs, the Commission believes the same considerations and benefits, discussed further below, that warrant these regulations for SDs and MSPs, warrant them for FCMs as well. As recent Congressional hearings in the wake of the MF Global bankruptcy have highlighted, an FCM's conduct holds potential to cause severe negative impact to market participants and the public.[141] In that the statutory

[133] Section 4d(d) of the CEA requires that each FCM designate an individual to serve as its chief compliance officer (CCO). Likewise, section 4s(k) of the CEA requires that each SD and MSP designate an individual to serve as its CCO.

[134] Section 4d(d) of the CEA authorizes the Commission to promulgate rules concerning the duties of a CCO of an FCM.

[135] The proposed regulations mis-numbered the subsections of § 3.3 such that two subsections were designated as ''(d).'' To avoid confusion, this release re-designates such sections correctly in brackets.

[136] A more detailed discussion of the comments can be found in section II.N. above.

[137] Comments from Rosenthal, Newedge, and NFA advocated separate treatment for FCMs, given the Commission's separate statutory authority over them. A number of other commenters, including Better Markets, NSCP, and CII generally supported extension of the same duties to FCMs (provided that certain modifications were made to the proposed rules).

[138] In this respect, the Commission observes that 55% of current FCMs are also registered as BDs with the SEC, and thus will already have a CCO and significant compliance regimes as required under the rules of FINRA. *See* letter from NFA, dated Jan. 18, 2011 (comment file for 75 FR 70881 (Designation of a Chief Compliance Officer; Required Compliance Polices; and Annual Report of a FCM, SD, or MSP)). FCMs that do not currently have a CCO or a compliance program may choose to develop a program in-house if their activities are limited and the regulatory requirements well-understood. Other FCMs may choose to purchase an off-the-shelf compliance manual and adjust it to correspond to their regulatory requirements. Still others may hire a third-party compliance firm, a law firm, or an accounting firm to draft a firm-specific manual. As of 2003, when the SEC published final compliance program rules for investment companies and investment advisers, the costs for these options ranged from $1,000 to $200,000. *See* Compliance Programs of Investment Companies and Investment Advisers, 68 FR 74714 (Dec. 24, 2003).

[139] *See* Compliance Programs of Investment Companies and Investment Advisers, 68 FR 74714 (Dec. 24, 2003).

[140] The SEC considered the same three alternative compliance avenues as noted above for FCMs. *See id.*

[141] *See* Press Release, Senate Committee on Agriculture, Nutrition & Forestry, Senator Pat

requirements of the CEA and Commission regulations under it seek to prevent harm to market participants and the public by FCMs, the Commission believes that requiring a robust CCO function within FCMs is an important benefit of these regulations. A CCO will serve as a focal point to better monitor and assure FCM legal compliance. Moreover, the Commission believes the role of FCMs likely will grow in importance as client clearing of swaps increases, fostering commensurate growth in the benefits of active compliance monitoring by CCOs of FCMs to the security and stability of swaps markets. The Commission also expects that consistent regulation of its registrants is likely to benefit the Commission's regulatory mission by increasing the efficiency of registrant oversight.

2. Harmonization With Other Regulatory Regimes

After reviewing comments,[142] the Commission is modifying its proposal to reduce the cost burden by harmonizing the CCO requirements for SDs, MSPs, and FCMs with the traditional compliance model as reflected in other regulatory regimes—including regimes established by FINRA for broker-dealers (BDs), the FHFA, and by the Commission for RFEDs—to the extent consistent with section 4s(k) of the CEA.[143] Specifically, the Commission has modified the rule to (1) require that the CCO ''administer'' the compliance policies of the registrant (rather than establish compliance polices); (2) confirm, as suggested by commenters, that the CCO's role in ''resolving'' conflicts of interest may involve actions other than making the final decision; (3) provide that the CCO must take ''reasonable steps to ensure compliance'' (rather than simply ''ensure compliance''); and (4) permit either the CCO or the CEO to make the required certification of the annual report.

3. Flexibility in Rule's Structure

In the CCO NPRM, the Commission requested comment on whether the structure of the proposed rules allows for sufficient flexibility, thereby permitting FCMs, SDs, and MSPs to control costs by tailoring their compliance programs to their individual circumstances. The comments received raised the following issues with cost-benefit implications:

- Allowing a CCO to perform other duties in addition to compliance duties;[144]
- Designation of multiple CCOs with defined areas of responsibility;[145]
- Allowing a single officer to be CCO for multiple affiliated entities;[146]
- Allowing CCOs of multiple affiliated entities to report to the board of a holding company that controls all affiliated entities;[147]
- Allowing CCOs to consult with other employees, outside consultants, lawyers, and accountants in fulfilling their duties;[148]
- Requiring a senior CCO to have responsibility for multiple affiliated entities, even if each has its own CCO; and[149]
- Requiring the CCO to be located remotely from the business trading unit.[150]

Having considered these comments, the Commission has taken steps to reduce the cost burden on registrants by expanding the flexibility allowed under the proposed rule. Specifically, the Commission agrees that firms, especially small firms, could reduce costs if a CCO were permitted to perform additional duties and therefore confirms that a CCO may share additional executive responsibilities and/or be an existing officer within the entity. In addition, the final rule would allow registrants to recognize cost savings by not prohibiting multiple legal entities from designating the same individual as CCO. The Commission also is not requiring the CCO to be remotely located from the business trading unit. Moreover, the Commission is modifying the rule to permit either the CCO or the CEO to make the certification required in the annual report, as requested by commenters. This change will reduce the compliance costs insofar as it may make it easier to recruit and retain qualified candidates for CCO. In response to NFA's concern about CCOs being able to rely on the expertise of others, presumably in part to reduce the cost of personally developing the requisite expertise, the Commission confirms that the qualifying language ''to the best of his or her knowledge and reasonable belief'' in the annual report certification required by the rule permits the CCO or CEO to rely on other experts for statements made in the annual report.

With respect to two of the above-noted issues, however, the statutory language does not afford the Commission flexibility to relax requirements. Specifically, section 4s(k) of the CEA requires the CCO to report to each registrant's board or senior officer, rather than to the board or senior officer of a consolidated corporate parent, so the Commission is unable to adjust the rule to permit the CCOs of multiple affiliated entities to report to the board of a holding company. Similarly, the statutory language of sections 4d(d) and 4s(k) of the CEA—requiring FCMs, SDs, and MSPs to ''designate an *individual* to serve as chief compliance officer''—provides the

Roberts: We Need Answers on MF Global * * * Futures Still Critical to Risk Management (Dec. 1, 2011), available at *http://www.ag.senate.gov/hearings/continuing-oversight-of-the-wall-street-reform-and-consumer-protection-act* (prepared remarks of Sen. Pat Roberts, ranking subcommittee member, at December 1, 2011 Senate Committee on Agriculture, Nutrition & Forestry).

[142] *See* e.g., NFA's comment letter and representatives of market participants in a May meeting with SEC and Commission staff (see *http://comments.cftc.gov/PublicComments/*) were concerned with differences between the Commission's proposed rules and FINRA's rules and recommended harmonization. The FHLBs commented that they are subject to FHFA regulation and requested that the Commission not impose duplicative regulations for them. Edison Electric Institute (EEI) urged the Commission to follow the Federal Energy Regulatory Commission's approach by setting forth principles of an effective compliance program while leaving the details to the registrant. FIA and SIFMA noted that the more traditional compliance model— RFEDs are required to designate a CCO and prepare an annual compliance certification under current Commission regulations (see 17 CFR 5.18(j).)—would be consistent with the approach the Commission took with regard to RFEDs. FIA and SIFMA, along with Newedge and Rosenthal, argued that the Commission should harmonize its rules with those of FINRA and defer to NFA's experience in determining the proper role for the CCO.

[143] To the extent the other regulatory regimes prescribe CCO rules more general than those specifically required by section 4s(k), they do not conform to statutory requirements and are not implemented in the final rules. However, the Commission believes the more specific requirements of section 4s(k) are supplemental—not contradictory—to the more general ''policies, procedures, and testing'' requirements of the rules of the other regulatory regimes.

[144] NFA and the FHLBs commented that the rules explicitly should permit the CCO to share any other executive role, such as CEO, to provide flexibility for smaller firms.

[145] NFA also argued that the rules should recognize that compliance expertise may reside with more than one individual, and thus the Commission should consider allowing an entity to designate multiple CCOs, so that each CCO's primary area of responsibility is defined, and each CCO should be required to perform duties and responsibilities with respect to their defined area.

[146] Newedge, Hess, and The Working Group argued that affiliated FCMs, SDs, and MSPs that are separate legal entities should be permitted to share the same CCO to increase compliance efficiency.

[147] The Working Group also argued and that the CCO of affiliated registrants should be allowed to report to a board of an affiliated entity that controls both entities.

[148] NFA also recommended that CCOs explicitly be permitted to consult with other employees, outside consultants, lawyers, and accountants.

[149] Better Markets commented that a senior CCO should have overall responsibility of each affiliated and controlled entity, even if individual entities within the group have CCOs.

[150] Better Markets recommended that the rule require the CCO office to be located remotely from the trading floor.

Commission no latitude to permit designation of multiple CCOs with delineated areas of responsibility. The Commission notes that any costs of these requirements are directly attributable to the statutory requirements of Congress, and not to Commission action.

4. Limited Scope of the Rule

Proposed § 3.3(a) required each SD, MSP, and FCM to designate an individual as a CCO and provide the CCO with the full responsibility and authority to develop and enforce, in consultation with the board or senior officer, appropriate policies and procedures to fulfill the duties set forth in the CEA and regulations. The proposed rule also required the CCO to establish policies and procedures required to be established by a registrant pursuant to the CEA and Commission regulations. The Commission believes that the benefits of the rule consist of consolidating oversight of compliance by FCMs, SDs, and MSPs in a single individual, thereby reducing the risk that compliance matters will be subject to inconsistent policies and procedures or that compliance matters will not receive the attention necessary to be effective.

Commenters [151] criticized the proposed rule for two reasons, each presumably based in part on the cost of expanding the traditional role of a CCO:

- A CCO should not be viewed as an enforcer of compliance polices; and
- A CCO should not be required to develop all compliance policies.

The Commission agrees with commenters that the rule could be modified to maintain the benefits identified above while imposing less burden on registrants. The Commission is therefore narrowing proposed § 3.3(a) by (i) removing the requirement that a CCO be provided with ''full'' responsibility and authority; (ii) removing the requirement that a CCO ''enforce'' policies and procedures; (iii) limiting the responsibilities of the CCO to (a) the ''swaps activities'' of SDs and MSPs and (b) FCMs' derivatives activities included in the definition of FCM under section 1(a)(28) of the CEA; and (iv) clarifying that a CCO need only develop policies and procedures to fulfill the duties set forth in, and ensure compliance with, the CEA and Commission regulations. The Commission believes that the rule as modified will achieve the benefits of consolidated compliance oversight without imposing costs on registrants that are unnecessary to achieve this goal.

5. CCO Reporting Line

Proposed § 3.3(a)(1) required that the CCO report to the board of directors or the senior officer of a registrant, that the board or senior officer approve the compensation of the CCO, and that the board or senior officer meet with the CCO at least once a year to discuss the effectiveness of compliance policies and their administration by the CCO. Proposed § 3.3(a)(2) also prohibited the board or senior officer of a registrant from delegating its authority over the CCO, including the authority to remove the CCO. The Commission believes that these aspects of the rule will ensure CCO independence from influence, interference, or retaliation from business trading unit personnel and freedom from conflicts of interest in performance of the CCO's duties. The Commission believes CCO independence is crucial to achieving the benefits of the CCO role as envisioned under the statutory provisions of the CEA because an independent CCO is more likely to: (i) Question business line decisions, (ii) speak out on non-compliance issues and raise them with senior management and the board, and (iii) have stature within the firm to successfully institute a culture of compliance.

Commenters raised the following issues with respect to the above-described aspects of the proposed rule:

- The CCO should be permitted to report to the governing body or senior officer of a division, rather than to the board; [152]
- The CCO should be permitted to report to a board committee, rather than to the whole board; [153]
- The CCO should be permitted to report to the board of a holding company; [154]
- The CCO should be permitted to report to an officer other than the senior officer; [155]
- CCO compensation and termination decisions should be reserved to the independent members of the board; [156]
- The CCO should be permitted to report to the full board at any time, without interference; [157] and
- The CCO should have the right to address the board prior to termination.[158]

Having considered the costs and benefits implications of these issues, the Commission is adopting the rule as proposed. Section 4s(k) of the CEA requires the CCO to ''report directly'' to the board or the senior officer of the SD or MSP. The Commission believes, therefore, that despite the costs imposed the statutory requirement that the CCO report directly to the board or senior officer does not permit a firm to have its CCO report to a board committee, the independent members of the board, the board of a holding company, or any officer other than the senior officer.

The Commission recognizes that adopting some commenters' recommendations would increase the independence of the CCO. The Commission has declined to modify the rule to include such recommendations because it believes the benefits outlined above will be sufficiently assured by the rule as adopted herein and thus the additional burden of more stringent independence requirements is unnecessary at this time.

6. Qualifications of the CCO

As proposed, § 3.3(b) required the CCO to have the background and skills appropriate for fulfilling the responsibilities of the position, and prohibited an individual who is statutorily disqualified under sections 8a(2) or 8a(3) of the CEA from serving. The Commission rationale for this is that a well-qualified CCO, without a history of disqualifying attributes, is

[151] Rosenthal commented that the Commission's rules should be revised in a manner that reflects the view that the CCO is only an advisor to management and should not be viewed as an enforcer of policies within the FCM. EEI and Newedge argued that the proposed rules go beyond what is required by the CEA by inappropriately imposing upon the CCO full responsibility to develop and enforce all policies.

[152] Cargill recommended that the definition of board of directors be expanded to include a governing body of a division, such as a management committee, and that the Commission add a definition of ''senior officer'' to include a senior officer of a division, because a division might be more familiar with the swaps activities of an SD.

[153] MetLife requested that the definition of board of directors include expert committees of the whole board.

[154] The Working Group argued that the CCO should be allowed to report to a board of an affiliated entity.

[155] EEI, FIA, SIFMA, NFA, and The Working Group argued that the CCO should be permitted to operate under the direction of corporate officers other than the senior officer, as long as independence and authority as a control function is maintained.

[156] Better Markets and Chris Barnard recommended that decisions to designate or terminate a CCO, as well as compensation decisions, be prescribed solely by independent members of the board, acting by majority vote.

[157] NWC recommended that (1) the term ''senior officer'' be defined as the CEO or chairman of the board, (2) the rule should permit the CCO to report to the full board at any time with no interference from a board committee or a CEO, and (3) that the rule should prohibit termination of the CCO unless the CCO is presented the opportunity to address the board.

[158] *Id.*

more likely to fulfill the duties of the position successfully and have the stature and experience to demand the respect necessary to instill a culture of compliance. The Commission believes that an effective CCO serves an important role in guarding against registrant failures and misfeasance, and the resulting losses to customers and other market participants.

Commenters criticized the above-described aspects of the proposed rule as follows, but no commenter provided any quantitative data to justify their arguments:

- It is unnecessary to include statutory disqualification as a qualification for the CCO; [159]
- ''Background and skills appropriate for fulfilling the responsibilities of the position'' is too vague a standard—qualifications should be left to the discretion of the firm; [160]
- The Commission should require CCOs to pass a specific compliance examination and be licensed; [161] and
- The Commission should prohibit members of a firm's legal department from acting as CCO due to potential conflicts of interest.[162]

Based on the issues raised by commenters, the Commission presumes that commenters are concerned about the cost of locating, recruiting, and compensating a CCO that meets the necessary qualifications, or about the costs to the market if CCOs are not well-qualified and fail to fulfill their duties under the CEA and rule. The Commission estimates that a well-qualified CCO for an FCM, SD, or MSP is likely to be compensated at approximately $216,000 per year.[163]

Having considered the costs and benefits implications of these issues, the Commission is adopting the rule as proposed. Given the duties and responsibilities of the CCO as set forth in the CEA and the rule, the Commission believes that the cost to FCMs, SDs, and MSPs to hire a well-qualified person to act as CCO are appropriate given the critical role the CCO will play in ensuring registrants comply with the CEA and Commission regulations. Moreover, the Commission believes the qualifications required by the rule as proposed are sufficient to ensure the necessary level of CCO qualification without need to adopt the more restrictive CCO qualifications (e.g., an examination and licensing requirement and/or legal counsel bar) recommended by some commenters. To maintain flexibility in the rule for the wide variety of registrants that will be affected, the Commission also is not defining what the ''background and skills appropriate for fulfilling the responsibilities of the position'' would be, leaving this determination to the discretion of the registrant as appropriate to their unique circumstances.

7. Role of the CCO

As proposed, § 3.3 established a number of duties for the CCO. Proposed § 3.3(d)(1) required the CCO to establish the registrant's compliance policies in consultation with the board of directors or senior officer. Proposed § 3.3(d)(2) required the CCO, in consultation with the board or senior officer, to resolve any conflicts of interest that may arise. Proposed § 3.3(d)(3) required the CCO to review and ''ensure compliance'' by the registrant with the registrant's compliance policies and all applicable laws and regulations.

Commenters criticized the above-described aspects of the proposed rule as follows:

- Responsibility for resolving conflicts of interest belongs more appropriately to the board or senior officer, not a CCO; [164]
- Responsibility for ensuring compliance belongs more appropriately to the board or senior officer, not a CCO; [165]
- The transfer of regulatory responsibility from executive officers to the CCO may result in executive officers spending less time and attention to compliance matters; [166]
- Firms will have difficulty retaining a CCO who is willing to perform the duties set forth in the rule.[167]

Having considered the cost and benefit implications of these issues, the Commission presumes that commenters are concerned in part about the cost of expanding their compliance departments to fulfill duties currently or traditionally handled by other executive officers or departments. In response to this concern, the Commission is adopting the final rule as follows: (1) The Commission is revising proposed § 3.3(d)(1) to track more closely the statutory language of section 4s(k) and require that the CCO ''administer'' the compliance policies of the registrant; (2) the Commission is not removing the requirement that the CCO ''resolve'' conflicts of interest from the rule because the requirement is provided for in section 4s(k)(2)(C) of the CEA, but confirms, as suggested by commenters, that the CCO's role in ''resolving'' conflicts of interest may involve actions other than making the final decision; and (3) the Commission is modifying proposed § 3.3(d)(3) to provide that the CCO must take ''reasonable steps to ensure compliance.''

[159] NFA argued that the prohibition on individuals who are disqualified by statute is unnecessary because an SD, MSP, or FCM's registration could be denied or revoked under section 8a(2)–(3) of the CEA if any principal of the registrant is subject to a statutory disqualification.

[160] Cargill commented that the requirement for a CCO to have ''the background and skills appropriate'' is a commendable aspirational goal but is too vague a standard for Federal law, and is best reserved as a business decision. The Working Group also commented that wide latitude for qualifications of a CCO is necessary.

[161] Newedge recommended that CCOs be required to pass a specific compliance examination and obtain a specific compliance license, as is the case in the securities world.

[162] Better Markets argued that a CCO should not be permitted to be an attorney that represents the SD, MSP, or FCM, or its board because the potential conflict would disqualify such an attorney.

[163] The Commission staff estimates concerning the wage rates are based on salary information for the securities industry compiled by SIFMA. The salary estimate was taken from SIFMA Report on Management & Professional Earnings in the Securities Industry 2010. Staff took an average of the last two years of salary estimates for Chief Compliance Officers, modified to account for inflation as well as overhead and other benefits, then adjusted upward based on the additional responsibility demanded from SD, MSP, and FCM CCOs as required by the CEA (as noted by commenters).

[164] NFA commented that resolution of conflicts of interest should rest with the board or the senior officer, in consultation with the CCO. FIA and SIFMA argued that when Congress used the term ''resolve any conflicts of interest that may arise,'' Congress did not mean resolve in the executive or managerial sense. Newedge commented that the CEO and business line supervisors are in a better position than the CCO to resolve conflicts. Participants in the May Meeting with Commission staff stated that resolving a conflict would traditionally be interpreted as eliminating the conflict, but that elimination is not always preferable and the compliance officer should not be the actual decision maker in the resolution.

[165] NSCP argued that ''ensure compliance'' imposes a level of responsibility on a CCO that cannot be discharged and is inconsistent with the customary role of a compliance officer. Hess argued that the proposal concentrates too much of the compliance function on a single individual and recommended that the CCO should remain the monitor of the compliance monitors. FIA, SIFMA, The Working Group, Newedge, and NFA each argued that requiring the CCO to ensure compliance goes beyond existing compliance models and creates a standard that is impossible to satisfy. FIA and SIFMA further argued that the requirement to remediate non-compliance issues acknowledges that instances of noncompliance are not wholly preventable by any person. FIA and SIFMA recommended that ''ensure compliance'' should mean taking reasonable steps to adopt, review, test, and modify compliance policies. EEI and participants in the May Meeting with Commission staff stated that ensuring compliance could mean that the CCO escalates a problem that has not been resolved.

[166] Newedge believes that any transfer of regulatory responsibility currently held by executive officers to the CCO could have the unintended effect of reducing the amount of time such officers spend on compliance matters.

[167] NFA also argued that the rules improperly redefine a CCO's duties, and registrants will have difficulty retaining CCOs who are willing to perform these duties.

The foregoing changes align the rule to the duties of the CCO for SDs and MSPs as set forth in the CEA, and, thus, the costs of these requirements are directly attributable to the statutory requirements of Congress, and not to Commission action. The Commission's decision to extend the same requirements to CCOs for FCMs is explained in detail above.

8. Certification of the Annual Report by the CCO ''Under Penalty of Law''

Proposed § 3.3(d)(6) required the CCO of an SD, MSP, or FCM to prepare, sign, and certify, under penalty of law, the annual report specified in section 4s(k)(3) of the CEA.

Commenters criticized the above-described aspects of the proposed rule as follows:

- The CEO, not the CCO, should certify the annual report; [168]
- Requiring the CCO to certify the annual report under penalty of law will make it difficult for registrants to retain a CCO and, thus, should not be required; [169] and
- The required certification should be subject to a materiality qualifier.[170]

Having considered the cost-benefit implications of these issues and the arguments raised by commenters, the Commission is modifying the requirement that the CCO make the required certification of the annual report to allow the registrant the discretion to choose whether the CCO or the CEO makes the certification. As explained by commenters, this change will make it easier and less costly for registrants to recruit and retain candidates for the position of CCO.

However, consistent with the statutory text in section 4s(k)(3)(B)(ii) of the CEA, the Commission is also declining to add a materiality qualifier to the certification, as suggested by commenters. Moreover, not qualifying certification on materiality is consistent with the approach taken in final rules for SDRs [171] and DCOs,[172] and with proposed CCO rules for SEFs; [173] the Commission expects consistent regulation of its registrants and registered entities to benefit the Commission's regulatory mission by increasing the efficiency of oversight. The Commission believes that limiting the CCO's certification requirement with the qualifier ''to the best of his or her knowledge and reasonable belief'' sufficiently mitigates commenters' liability costs concerns because the rule would not impose liability for compliance matters that are beyond the certifying officer's knowledge and reasonable belief at the time of certification.

Having modified the rule as described above, and otherwise confined the rule to the requirements of the CEA, the Commission believes that the costs of these requirements are directly attributable to the statutory requirements of Congress, and not to Commission action. The Commission's decision to extend the same requirements to CCOs for FCMs is explained in detail above.

9. Content of the Annual Report

The proposed regulation required the annual report to contain (1) a description of the compliance by the registrant with respect to the CEA and regulations; (2) a description of each of the registrant's compliance policies; (3) a review of each applicable requirement under the CEA and regulations, and, with respect to each, identification of the policies that ensure compliance, an assessment as to the effectiveness of the policies, discussion of areas of improvement, and recommendations of potential or prospective changes or improvements to its compliance program and resources devoted to compliance; (4) a description of the registrant's financial, managerial, operational, and staffing resources set aside for compliance with the CEA and regulations, including any deficiencies in such resources; (5) a delineation of the roles and responsibilities of a registrant's board of directors or senior officer, relevant board committees, and staff in addressing any conflicts of interest, including any necessary coordination with, or notification of, other entities, including regulators; and (6) a certification of compliance with sections 619 and 716 of the Dodd-Frank Act (the Volcker Rule and Derivatives Push-Out), and any rules adopted pursuant to these sections. The proposed rule also required FCMs, SDs, and MSPs to maintain records of its compliance policies, materials provided to the board in connection with its review of the annual compliance report, and work papers that form the basis of the annual compliance report.

The Commission believes the benefits of the annual report result from the focus on compliance with the CEA and Commission regulations. The annual requirement to compile in a single document the results of a registrant's compliance policies and procedures should serve as an efficient means to focus the registrant's board and senior management on areas requiring additional compliance resources or changes to business practices; it also will provide the Commission with a detailed overview of the state of compliance of the industry as a whole. This annual and ongoing compliance focus will result in increased industry compliance, thereby increasing market security and stability. A secure and stable market fosters increased market confidence and increased activity by investors and hedgers managing risk.

Commenters raised the following issues with respect to the above-described aspects of the proposed rule:

- Overbreadth concerns with the requirements for the content of the annual report; [174]

[168] Rosenthal commented that FINRA's approach to certification is preferable, i.e., the CEO certifies that the firm has processes to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with securities laws, regulations, and FINRA rules. FIA, SIFMA, and Newedge each argued that section 4s(k)(3) of the CEA requires the CCO to sign the annual report, but does not require the CCO to certify the report. FIA, SIFMA, MFA, Newedge, and NFA all recommended that the rule be revised to require the CEO to certify the report. Participants in the May Meeting with Commission staff stated that requiring the CEO to make the certification appropriately shares responsibility between compliance and business management. FIA and SIFMA recommended that, with respect to any Commission registrant that is also a BD, the Commission should require the CEO to make the certification.

[169] FIA and SIFMA felt that imposing criminal liability for annual report certifications would hinder the ability to fill the position of CCO. FIA and SIFMA requested that the Commission clarify that criminal liability for the certification will not apply (absent a knowing and willful materially false and misleading statement) because there is no indication that Congress ever thought CCOs should be subject to criminal liability. Similarly, NSCP requested that the Commission clarify whether ''under penalty of law'' means liability under 18 U.S.C. 1001 for a false statement to a Federal officer. Rosenthal argued that requiring the CCO to certify under penalty of law will make the CCO liable for firm infractions and will give disgruntled customers a roadmap for frivolous lawsuits. Newedge also believes that the requirement to certify under penalty of law is not fair or practicable because whoever certifies will have to rely on many individuals to compile the report. On the other hand, Hess commented that the certification language strikes an appropriate balance such that strict liability is not imposed for inadvertent errors.

[170] NSCP commented that the certification that the report is accurate and complete should have a materiality qualifier added to it. Participants in the May Meeting with Commission staff urged the Commission to adopt a standard for the annual report certification that is reasonably attainable.

[171] *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR at 54584.

[172] *See* Derivatives Clearing Organization General Provisions and Core Principals, 76 FR at 69435.

[173] *See* Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214, 1252 (Jan. 7, 2011).

[174] NSCP, The Working Group, EEI, and Hess each argued that the level of detail contemplated by the rule would impose unnecessary burdens on the CCO with little offsetting benefits. NSCP argued that a better approach would be to follow the SEC requirements for annual reviews of compliance by registered investment advisers. NSCP believes the

• Concern that the annual report is not subject to board approval or a board addendum noting any disagreement with the report; [175]

• Concern that some requirements for the content of the annual report are inappropriate for a document that may be publicly available; [176] and

• Concern that, absent a materiality qualifier, the recordkeeping obligations will be unduly burdensome.[177]

In response to comments, the Commission has reduced the cost burden of the annual report by modifying the rule as follows: (1) Requiring a description of the registrant's policies and procedures, rather than a description of the compliance of the registrant; (2) requiring identification of the registrant's policies and procedures that ''are reasonably designed'' to ensure compliance, rather than those that ensure compliance; (3) including a required description of *material* non-compliance issues; (4) including a materiality standard with respect to the description of any deficiency in compliance resources; (5) deleting the proposed delineation of the roles and responsibilities of a registrant's board of directors or senior officer, relevant board committees, and staff in addressing any conflicts of interest; and (6) removing the requirement to certify compliance with sections 619 and 716. The Commission has not modified the recordkeeping requirement because it believes the rule sufficiently qualifies the materials that must be retained by stating that the records must be ''relevant'' to the annual report.

The Commission observes that section 4s(k) of the CEA requires the annual report and specifies that it contain a description of the compliance of the SD or MSP with respect to the CEA, and a description of each policy and procedure of the SD or MSP of the CCO (including the code of ethics and conflict-of-interest policies). To the extent that the rule also requires these descriptions, the Commission believes that the costs of these requirements are attributable to statutory requirements not subject to Commission discretion. The Commission's decision to extend the same requirements to CCOs for FCMs is explained in detail above. Therefore, the Commission believes the modified rule would impose modest costs, attributable to the narrow requirements of: (i) Listing any material changes to compliance policies and procedures; and (ii) describing the financial, managerial, operational, and staffing resources set aside for compliance, including any material deficiencies. The Commission believes the benefits of these requirements warrant the limited incremental costs to comply.

Costs

Section 4s(k) requires SDs and MSPs to designate a CCO and undertake certain other compliance measures. The costs and benefits that necessarily result from these basic statutory requirements are considered to be the ''baseline'' against which the costs and benefits of the Commission's final rules are compared or measured. The ''baseline'' level of costs includes the costs that result from the following activities required by the statute:

• Designating a CCO;

• Corporate governance changes to require the CCO to report directly to the board or senior officer;

• Reviewing the compliance of the SD and MSP with section 4s of the CEA;

• Requiring the CCO, in consultation with the board or the senior officer, to resolve any conflicts of interest;

• Administration of each policy and procedure required to be established under section 4s;

• Ensuring compliance with the CEA and Commission regulations relating to swaps;

• Establishing procedures for the handling, management response, remediation, retesting, and closing of non-compliance issues;

• Preparing and signing a compliance report containing a description of compliance and a description of each policy and procedure of the SD or MSP; and

• Furnishing the annual report to the Commission along with each appropriate financial report.

Similarly Section 4d(d) defines a statutory ''baseline'' against which the costs and benefits of the Commission's final rules are to be measures with respect to FCMs. That ''baseline'' cost level is defined by those costs that result from an FCM's CCO designation.

Compliance with the statutory baselines alone will result in costs for FCMs, SDs and MSPs. For example, designating a CCO that reports to the board or senior officer could include the cost of board action and the salary of the CCO. Similarly, preparing and signing a compliance report containing a description of compliance and each compliance policy and procedure entails the cost of the CCO's time.

Congress mandated that the Commission adopt rules to implement each of the statutory provisions. The following implementation decisions may cause affected entities to incur costs to comply with the final regulations regarding designation of a CCO, the duties of the CCO, and the annual report:

• Extending the statutory and rule requirements applicable to SDs and MSPs to FCMs;

• Providing the CCO with authority to develop, in consultation with the board

proposed rule is overbroad and discourages reporting of compliance issues to the CCO. Newedge argued that thousands of Federal, SRO, and internal rules apply, so the report should contain a summation of compliance, with details only for areas of material noncompliance. FIA and SIFMA argued that a one-size-fits-all approach to the annual report requirements is not appropriate because registrants vary in size and focus. FIA, SIFMA, and The Working Group recommended that the Commission specify the material issues that should be discussed, or provide a standard form. FIA, SIFMA, and NFA also argued that the report should identify the policies that are reasonably designed to result in compliance, not that ensure compliance. Hess recommended that the annual report contain only a summary of the registrant's compliance policies and procedures. CMC commented that the scope of activities included in the annual report should be limited to those directly triggering the requirement of a CCO. EEI argued that inclusion of descriptions of violations in the report should be decided on a case-by-case basis by the registrant's governing body. NFA requested that a materiality qualifier be added to the requirement that registrants include a description of non-compliance. FIA and SIFMA argued that the CCO is not in a position to describe the financial, material, operational, and staffing resources set aside for compliance, rather the CCO only should be required to describe the resources of the compliance department and any recommendations that the CCO has made to senior management with regard to the same. FIA and SIFMA argued that the Sarbanes-Oxley Act already requires public companies to report the roles and responsibilities of its board, senior officers, and committees in resolving conflicts of interest, so the Commission should allow such reporting to satisfy this content requirement for the annual report. NFA also recommended that the reporting of any necessary coordination with, or notification of other entities, including regulators, should be deleted. NFA, FIA, and SIFMA recommended that the certification of compliance with sections 619 and 716 of the Dodd-Frank Act be deleted, arguing that the Commission should wait for the implementing rulemakings for such sections before determining certification requirements.

[175] Better Markets recommended that the board approve the annual report in its entirety or specify where and why it disagrees with any provision, and then CCOs should provide the report to the Commission either as approved or with statements of disagreement.

[176] The Working Group argued that a description of deficiencies in resources dedicated to compliance would require a CCO to identify potential shortcomings and report them in a document likely to be available to the public, which could materially hinder the CCO's ability to function as an integral member of the management team.

[177] The Working Group argued that retaining all materials relating to the preparation of the report will cause the CCO to retain all materials for fear of an audit that second-guesses the CCO's materiality judgments, or the CCO will limit his or her inquiries to avoid making a determination of materiality. The Working Group recommended that materials to be retained should be only those germane to the content of the compliance report.

or senior officer, appropriate policies and procedures;

- Requiring the board or senior officer to appoint the CCO, approve the CCO's compensation, and meet with the CCO once a year;
- Requiring designation of a CCO with the background and skills appropriate for fulfilling the responsibilities of the position and that is not statutorily disqualified;
- Submission of a Form 8–R to the Commission for the CCO as a principal of the firm;
- Listing any material changes to compliance policies and procedures in the annual report; and
- Describing the financial, managerial, operational, and staffing resources set aside for compliance, including any material deficiencies, in the annual report.

As discussed, the Commission has attempted, wherever possible, to alleviate burdens for registrants while remaining consistent with the CEA. The Commission has taken steps to reduce the responsibilities of the CCO and lower staffing and corporate governance costs for the entity by permitting the CCO to perform other duties and act as the CCO for more than one entity. The Commission has removed the requirement that the CCO be provided with the authority to enforce compliance policies and procedures, limited the CCO's duties to those directly required by the CEA and Commission regulations relating only to the swaps activities of SDs and MSPs and the derivatives activities included in the definition of FCM under section 1(a)(28) of the CEA, and required the CCO be responsible for administering, not establishing, compliance policies. The Commission also is permitting either the CCO or the CEO to certify the annual report.

The Commission estimates a base salary for a Chief Compliance Officer in the financial services industry at approximately $216,000 per year, as explained above. Because entities may designate a current employee as the CCO, some SDs, MSPs, or FCMs may not need to hire an additional member of staff. For example, entities currently regulated by prudential authorities already may have a CCO or another employee who could serve as a CCO; other entities may determine it is more cost-effective based on their current business models to designate a current employee as CCO, perhaps adjusting that individual's salary accordingly. Because of the wide variety of possibilities in determining the compensation of a CCO, the Commission finds it is impossible to estimate a cost burden for the industry of the statutory requirement to designate a CCO.

One commenter presented a report prepared by NERA stating that designation of a CCO and preparation of an annual compliance report by certain entities would entail average incremental start-up costs of $445,000 and average incremental ongoing annual costs of $760,000.[178] The Commission observes that the incremental average costs provided by NERA do not differentiate between the costs of compliance with proposed § 3.3 and the costs of compliance with sections 4d(d) and 4s(k) of the CEA absent Commission rulemaking. Accordingly, the Commission believes that the cost estimates presented by NERA exceed the incremental costs attributable to Commission rulemaking. The NERA report, however, provides insufficient information to allow the Commission to assess the magnitude of the excess.

Other than as indicated below with respect to CCO compensation and costs resulting from collections of information subject to the Paperwork Reduction Act, incorporated by reference herein, the Commission has no reliable quantitative data from which to reasonably estimate the costs of compliance associated with the CCO's duties and the annual report required by the rules in this release. After conducting a review of applicable academic literature, the Commission is not aware of any research reports or studies that are directly relevant to its considerations of costs and benefits of the final rules. The Commission anticipates that many entities may currently have a CCO pursuant to other regulations. The Commission notes that dually registered FCMs and BDs are more likely to have a CCO [179] than entities that are subject to such requirement for the first time.[180] Costs, therefore, are expected to be higher for those entities not currently dually registered. Registrants that do not currently have a CCO or a compliance program may choose to develop a program in-house if their activities are limited and the regulatory requirements well-understood. Other registrants may choose to purchase an off-the-shelf compliance manual and adjust it to correspond to their regulatory requirements. Still others may hire a third-party compliance firm, a law firm, or an accounting firm to draft a firm-specific manual. As of 2003, when the SEC published final compliance program rules for investment companies and investment advisers, the costs for these options ranged from $1,000 to $200,000.[181]

Certain of the costs associated with these CCO, compliance policy, and annual report rules result from collections of information subject to the Paperwork Reduction Act. Costs attributable to collections of information subject to the PRA are discussed further in section V.B.3. below. The Commission has also considered these costs, which it incorporates by reference herein, in its section 15(a) analysis.

Benefits

The Commission believes that the CCO rules will protect market participants and the public by promoting compliance with the CEA and Commission regulations through (1) the designation and effective functioning of the CCO, and (2) the establishment of a framework for preparation of a meaningful annual review of an FCM's, SD's, and MSP's compliance program. As a qualified, impartial, accountable focal point, the CCO is an effective vehicle to ensure that vital market actors—SDs, MSPs, and FCMs—comply with the law and

[178] NERA, Cost-Benefit Analysis of the CFTC's Proposed Swap Dealer Definition Prepared for the Working Group of Commercial Energy Firms, December 20, 2011. In this late-filed comment supplement, NERA concludes that cost-benefit considerations compel excluding entities ''engaged in production, physical distribution or marketing of natural gas, power, or oil that also engage in active trading of energy derivatives''—termed ''nonfinancial energy companies'' in the report—from regulation as swap dealers, including § 3.3.

[179] In this respect, the Commission observes that 55% of current FCMs are also registered as BDs with the SEC, and thus may already have a CCO as required under the rules of FINRA. *See* letter from NFA, dated Jan. 18, 2011 (comment file for 75 FR 70881 (Designation of a Chief Compliance Officer; Required Compliance Polices; and Annual Report of a FCM, SD, or MSP)).

[180] The Commission notes that in 2006 the UK FSA conducted a cost benefit analysis when promulgating requirements related to ensuring effective compliance with the applicable regulatory framework, including a requirement that a compliance officer be appointed that reports to the governing body and has the necessary authority and responsibility for the compliance oversight function. The UK FSA was adopting rules that replaced existing guidance and concluded from survey results that the incremental aggregate cost of compliance for approximately 2000–2500 firms was £4.5 to 5.5 million in one-off costs ($7.1 to 8.6 million at the current exchange rate, or $3,550 to $4,300 per firm) and £6.5 to 8.5 million in ongoing costs ($10.1 to 13.3 million at the current exchange rate, or $5,050 to $6,650 per firm). *See* FSA Consultation Paper 06/9, Organisational Systems and Controls: Common Platform for Firms, Annex 2 (May 2006).

[181] *See* Compliance Programs of Investment Companies and Investment Advisers, 68 FR 74714 (Dec. 24, 2003). The Commission notes that significant differences in the activities and structures of investment advisors and SDs/MSPs/FCMs may create significant differences in the costs incurred by the respective entities; these SEC estimates provide at best an imperfect measure from which to very roughly attempt to gauge compliance costs for affected entities.

regulations, including those designed to contain systemic risk through appropriate risk management efforts. In this way, these rules foster financial integrity and responsible risk management practices to protect the public from the adverse consequences of FCM, SD, or MSP failure or misfeasance that an effective compliance program may help to prevent.

The annual compliance report will help FCMs, SDs, MSPs, and the Commission to assess whether the registrant has mechanisms in place to address adequately compliance problems that could lead to a failure of the registrant. It also will assist the Commission in determining whether the registrant remains in compliance with the CEA and the Commission's regulations, including the customer protection regime for segregation of customer funds, supervision of trading activities, and risk management. Such compliance will protect market participants and the public from market disruptions and financial losses resulting from the failure or misfeasance of a registrant.

Section 15(a) Determination

1. Protection of Market Participants and the Public

The Commission believes that the compliance measures specified in these rules reinforce the CEA's protections for swap market participants, futures markets participants, and the public. Just as the CEA's regulation of futures and swaps transactions promotes the ''national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair, and financially secure trading facilities'' [182] so do these rules by ensuring, through a CCO, that entities are in compliance with CEA regulations. Concentrating compliance responsibility in one individual with independent authority, rather than dispersing it throughout an organization (and thus potentially diminishing accountability), is one example of this. Compliance evaluation and preparation of an annual report are other examples. Thus, taken together, these requirements set out a compliance regime that endeavors to ensure protection for market participants and public that the CEA is intended to provide. Moreover, to the extent that provisions of the CEA diminish the potential for harmful market disruptions and attendant financial losses to market participants and the general public as Congress intended in enacting the Dodd-Frank Act, these rules enhance that protection.

While the Commission recognizes there are costs associated with this rulemaking and the mandate from Congress it represents, the Commission believes that, as discussed above, it has included measures to afford firms flexibility in the designation of a CCO, as well as other made other burden-reducing changes to the proposed rules. It believes these measures minimize the costs attributable to implementation decisions within its statutory authority. The Commission does not believe that any such incremental costs undermine effective protection of market participants and the public, but rather will be a worthwhile investment toward enhancing that protection.

2. Efficiency, Competitiveness, and Financial Integrity of Markets [183]

Secure and stable SDs, MSPs, and FCMs are critical components of the efficient, competitive, and financially sound functioning of derivatives markets—futures and swaps. The financial integrity of these markets, in particular, is achieved through layers of protection. Requirements for an effective FCM, SD, and MSP compliance program will add a new layer of protection to ensure that registrants remain compliant with the CEA and Commission regulations, and in particular those relating to risk management, diligent supervision, and system safeguards.

An effective CCO will provide benefits to FCMs, SDs, and MSPs and the markets they serve by implementing and overseeing compliance measures that enhance the safety and efficiency of registrants and reduce systemic risk. Reliable and financially sound FCMs, SDs, and MSPs are essential for the stability of the derivatives markets they serve, and for the greater public, which benefits from a sound financial system.

The Commission believes that to the extent there are any incremental costs associated with these rules attributable to the implementation decisions within its statutory authority, they are competitively neutral. They do not favor or disfavor any class of market participant over others. In other words, no entity should have a greater advantage over another based on these rules alone.

3. Price Discovery

The Commission has identified no likely material impact on price discovery from the costs and benefits of these rules pertaining to CCO designation and related compliance requirements.

4. Sound Risk Management

The Commission believes these rules promote sound risk management. The regulatory provisions that interpret or implement the statutory requirements for the CCO and annual report serve to reinforce and ensure the effectiveness of FCM, SD, and MSP compliance programs, including their risk management components. Compliance with § 23.600 (risk management program) and related regulations encompasses, among other things, policies and procedures for monitoring and managing of credit exposures to counterparties, market risk, liquidity risk, settlement risk, and other applicable risk exposures. Compliance with § 1.14 (risk assessment recordkeeping requirements for FCMs) and related regulations encompasses, among other things, policies and procedures for monitoring and managing of credit risk, market risk, and other applicable risk exposures. The CCO has responsibility to ensure that the FCM, SD, or MSP is compliant with these regulations. Costs attendant to satisfying CCO and annual report requirements in these rules represent an investment towards improved risk management, not a diminution from them.

5. Other Public Interest Considerations

The Commission does not believe that the rule will have a material effect on public interest considerations other than those identified above.

H. Conclusion

Having considered the costs and benefits of the final rules in light of the factors enumerated in section 15(a)(2) of the CEA, the Commission is adopting the rules as set forth in this release.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [184] 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. The Commission has already established certain definitions of ''small entities'' to

[182] Section 3(a) of the CEA.

[183] Although by its terms CEA section 15(a)(2)(B) applies to futures markets only, the Commission finds this factor useful in analyzing regulations pertaining to swaps markets as well.

[184] 5 U.S.C. 601 *et seq.*

be used in evaluating the impact of its rules on such small entities in accordance with the RFA.[185] SDs and MSPs are new categories of registrant. Accordingly, the Commission noted in the proposals that it had not previously addressed the question of whether such persons were, in fact, small entities for purposes of the RFA.

In this regard, the Commission explained that it previously had determined that FCMs should not be considered to be small entities for purposes of the RFA, based, in part, upon FCMs' obligation to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally. Like FCMs, SDs will be subject to minimum capital and margin requirements, and are expected to comprise the largest global financial firms—and the Commission is required to exempt from designation as an SD entities that engage in a de minimis level of swaps dealing in connection with transactions with or on behalf of customers. Accordingly, for purposes of the RFA for the proposals and future rulemakings, the Commission proposed that SDs not be considered ''small entities'' for essentially the same reasons that it had previously determined FCMs not to be small entities.

The Commission further explained that it had also previously determined that large traders are not ''small entities'' for RFA purposes, with the Commission considering the size of a trader's position to be the only appropriate test for the purpose of large trader reporting. The Commission then noted that MSPs maintain substantial positions in swaps, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for the proposals and future rulemakings, the Commission proposed that MSPs not be considered ''small entities'' for essentially the same reasons that it previously had determined large traders not to be small entities.

The Commission concluded its RFA analysis applicable to SDs and MSPs as follows: ''The Commission is carrying out Congressional mandates by proposing these rules. The Commission is incorporating registration of SDs and MSPs into the existing registration structure applicable to other registrants. In so doing, the Commission has attempted to accomplish registration of SDs and MSPs in the manner that is least disruptive to ongoing business and most efficient and expeditious, consistent with the public interest, and accordingly believes that these registration rules will not present a significant economic burden on any entity subject thereto.''

The Commission did not receive any comments on its analysis of the application of the RFA to SDs and MSPs.

The final rules will also impact FCMs and IBs, each of which is addressed separately in the following paragraphs.

In its proposals, the Commission explained that it had previously established certain definitions of ''small entities'' to be used in evaluating the impact of the Commission's rules on such small entities in accordance with the RFA. In the Commission's ''Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act,'' [186] the Commission concluded that registered FCMs should not be considered to be small entities for purposes of the RFA. The Commission's determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the Commission. Likewise, the Commission determined ''that, for the basic purpose of protection of the financial integrity of futures trading, Commission regulations can make no size distinction among registered FCMs.'' [187] Thus, with respect to registered FCMs, the Commission believes that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

The Commission previously has determined that, for purposes of the RFA, the Commission should ''evaluate within the context of a particular rule proposal whether all or some [IBs] should be considered to be small entities and, if so, to analyze the economic impact on [IBs] of any such rule at that time. Specifically, the Commission recognizes that the [IB] definition, even as narrowed to exclude certain persons, undoubtedly encompasses many business enterprises of variable size.'' [188] At present, IBs are subject to various existing rules that govern and impose minimum requirements on their internal compliance operations, based on the nature of their business. The Commission believes that the amendments will merely augment the existing compliance requirements of such persons to address potential conflicts of interest within such firms. To the extent that certain IBs may be considered to be small entities, the Commission believes that the final rules will not have a significant economic impact.

The Commission did not receive any comments on its analysis of the application of the RFA to FCMs and IBs.

Accordingly, pursuant to Section 605(b) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these rules and rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a registrant is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Commission's adoption of §§ 23.200 through 23.205 (Reporting, Recordkeeping, and Daily Trading Records), 23.600 (Risk Management Program), 23.601 (Monitoring of Position Limits), 23.602 (Diligent Supervision), 23.603 (Business Continuity and Disaster Recovery), 23.605 (Conflicts of Interest Policies and Procedures for SDs and MSPs), 23.606 (General Information: Availability for Disclosure and Inspection), 23.607 (Antitrust Considerations), 3.3 (Chief Compliance Officer), and 1.71 (Conflicts of Interest Policies and Procedures for FCMs and IBs) impose new information collection requirements on registrants within the meaning of the Paperwork Reduction Act.[189]

Accordingly, the Commission requested and OMB assigned control numbers for the required collections of information. The Commission has submitted this notice of final rulemaking along with supporting documentation for OMB's review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for these collections of information are ''Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, OMB control number 3038–0087,'' ''Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants, OMB control number 3038–0084,'' ''Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap

[185] 47 FR 18618 (Apr. 30, 1982).

[186] 47 FR 18618, Apr. 30, 1982.

[187] *Id.* at 18619.

[188] 48 FR 35248, 35276, Aug. 3, 1983.

[189] 44 U.S.C. 3501 *et seq.*

Participants, OMB control number 3038–0079,'' ''Annual Report for Chief Compliance Officer of Registrants, OMB control number 3038–0080,'' and ''Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers, OMB control number 3038–0078.'' [190] Many of the responses to this new collection of information are mandatory.

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

The regulations require each respondent to furnish certain information to the Commission and to maintain certain records.[191] The Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed in the Recordkeeping NPRM, the Duties NPRM, the CCO NPRM, the SD/MSP Conflicts NPRM, and the FCM/IB Conflicts NPRM. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicited comments in order to: (i) Evaluate whether the proposed collections of information were necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

It is not currently known how many SDs and MSPs will become subject to these rules, and this will not be known to the Commission until the registration requirements for these entities become effective. In its rule proposals, the Commission took ''a conservative approach'' to calculating the burden hours of this information collection by estimating that as many as 300 SDs and MSPs would register.[192] Since publication of the proposals in late 2010, the Commission has met with industry participants and trade groups, discussed extensively the universe of potential registrants with NFA, and reviewed public information about SDs active in the market and certain trade groups. Over time, and as the Commission has gathered more information on the swaps market and its participants, the estimate of the number of SDs and MSPs has decreased. In its FY 2012 budget drafted in February 2011, the Commission estimated that 140 SDs might register with the Commission.[193] After recently receiving additional specific information from NFA on the regulatory program it is developing for SDs and MSPs,[194] however, the Commission believes that approximately 125 SDs and MSPs, including only a handful of MSPs, will register. While the Commission originally estimated there might be approximately 300 SDs and MSPs, based on new estimates provided by NFA, the Commission now estimates that there will be a combined number of 125 SDs and MSPs that will be subject to new information collection requirements under these rules.[195]

For purposes of the PRA, the term ''burden'' means the ''time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal Agency.''

In each of the NPRMs the Commission estimated the cost burden of the proposed regulations based upon an average salary of $100 per hour. In response to this estimate, The Working Group commented that, inclusive of benefit costs and allocated overhead, the per hour average salary estimate for compliance and risk management personnel should be significantly higher than $120. FIA and SIFMA stated that some of the compliance policies required by the proposed regulations will be drafted by both in-house lawyers and outside counsel, so the blended hourly rate should be roughly $400.

The Commission notes that its estimate of $100 per hour was based on recent Bureau of Labor Statistics findings, including the mean hourly wage of an employee under occupation code 23–1011, ''Lawyers,'' that is employed by the ''Securities and Commodity Contracts Intermediation and Brokerage Industry,'' which is $82.22. The mean hourly wage of an employee under occupation code 11–3031, ''Financial Managers,'' (which includes operations managers) in the same industry is $74.41.[196] Taking these data, the Commission then increased its hourly wage estimate in recognition of the fact that some registrants may be large financial institutions whose employees' salaries may exceed the mean wage. The Commission also observes that SIFMA's ''Report on

[190] These collections include certain collections required under the Business Conduct Standards with Counterparties rulemaking, as stated in that rulemaking. *See* Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734 (Feb. 17, 2012).

[191] *See* 75 FR at 76674 (maintain transaction and position records of swaps, including daily trading records of swaps and related cash and forward transactions; business records; records of data and information reported to SDRs and for real time public reporting purposes).

See 75 FR at 71404 (establish a risk management program, including specific policies for compliance with position limits and to ensure business continuity and disaster recovery; policies to prevent unreasonable restraints of trade and anticompetitive burdens; establish systems to diligently supervise the activities relating to its business; and make certain information available for disclosure and inspection by the Commission).

See 75 FR at 71395 (adopt conflicts of interest policies and procedures; recordkeeping obligations related to implementation of policies and procedures designed to ensure compliance with Commission regulations; document certain communications between non-research and research personnel; record of the basis for determination of research personnel compensation; provision of certain disclosures to recipients of research reports).

See 76 FR at 70887 (prepare a Form 8–R designating a CCO; draft and maintain certain compliance policies and procedures; annually prepare and furnish to the Commission an annual report describing the registrant's compliance policies and resources and compliance with the CEA and Commission regulations; amend previously furnished annual reports, if necessary; and maintain records related to compliance policies and annual reports).

See 75 FR at 70157 (adopt conflicts of interest policies and procedures; recordkeeping obligations related to implementation of policies and procedures designed to ensure compliance with Commission regulations; document certain communications between non-research and research personnel; record of the basis for determination of research personnel compensation; provision of certain disclosures to recipients of research reports).

[192] 75 FR at 76671, 75 FR at 71402, 75 FR at 71394, and 75 FR 70885.

[193] CFTC, President's Budget and Performance Plan Fiscal Year 2010, p. 13–14 (Feb. 2011), *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cftcbudget2012.pdf.* The estimated 140 SDs includes ''[a]pproximately 80 global and regional banks currently known to offer swaps in the United States;'' ''[a]pproximately 40 non-bank swap dealers currently offering commodity and other swaps;'' and ''[a]pproximately 20 new potential market makers that wish to become swap dealers.'' *Id.*

[194] Letter from Thomas W. Sexton, Senior Vice President and General Counsel, NFA to Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, CFTC (Oct. 20, 2011) (NFA Cost Estimates Letter).

[195] NFA Letter (Oct. 20, 2011) (estimating that there will be 125 SDs and MSPs required to register with NFA).

[196] *See http://www.bls.gov/oes/2099/mayowe23.1011.htm* and *http://www.bls.gov/oes/current/oes113031.htm.*

Management & Professional Earnings in the Securities Industry—2010'' estimates the average wage of a compliance attorney and a compliance staffer in the U.S. at only $46.31 per hour.

The Commission recognizes that some registrants may hire outside counsel with expertise in the various regulatory areas covered by the regulations discussed herein. While the Commission is uncertain about the billing rates that registrants may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. Outside counsel may be able to leverage its expertise to reduce substantially the number of hours needed to fulfill a requested assignment, but a registrant that uses outside counsel may incur higher costs than a registrant that does not use outside counsel. Any determination to use outside counsel is at the discretion of the registrant. Having considered the comments received and having reviewed the available data, the Commission has determined that $100 per hour remains a reasonable estimate of the per hour average salary for purposes of its PRA analysis. The Commission also notes that this determination is consistent with the Commission's estimate for the hourly wage for CCOs under the recently adopted DCO final rules.[197]

The Commission received comments related to the PRA for three of its notices of proposed rulemaking: Recordkeeping, Duties, and CCO. No comments were received with regard to the two Conflicts proposals.

1. Recordkeeping NPRM

With respect to the voice recording requirements of the Recordkeeping NPRM, as explained in more detail above, ATA commented that telephone recording systems that are compliant with all of these requirements would impose a significant additional cost to dealers. The Working Group commented that the long-term electronic storage of significant amounts of pre-execution communications will prove costly over the proposed five-year period. The Working Group also commented that requiring records of physical positions linked with related swap transactions would impose very expensive and burdensome requirements on millions of physical transactions that are undertaken by commercial energy firms that are also parties to swap transactions.

With respect to the record retention requirements in the Recordkeeping NPRM, MFA commented that maintaining records of transactions for 5 years following the termination, expiration, or maturity of the transactions would constitute an additional administrative burden and entail substantial additional cost. ISDA & SIFMA also believe that recordkeeping of all oral and written communications that may lead to execution of a swap for the life of a swap plus five years could impose a heavy cost burden to implement and maintain, for only a small incremental benefit and would be more supportive of a voice recording obligation to retain recordings for a minimum period of six months. The Commission notes that it is modifying the retention period for voice recordings to one year, which should minimize the burden on SDs and MSPs.

Notably, none of these commenters suggested specific revised calculations with regard to the Commission's burden estimate. Accordingly, the only change that the Commission is making to its estimation of burdens associated with its Recordkeeping rules is the change to reflect the new estimate of the number of SDs and MSPs. The Commission now estimates the burden to be 2096 hours, at an annual cost of $209,600 [2096 × $100 per hour] for each SD and MSP, and the aggregate hour burden cost for all registrants is 262,000 burden hours and $26,200,000 [262,000 × $100 per hour].

In addition to the per hour burden discussed above, the Commission anticipated that SDs and MSPs may incur certain start-up costs in connection with the proposed recordkeeping obligations. Such costs would include the expenditures related to developing and installing new technology or reprogramming or updating existing recordkeeping technology and systems to enable the SD or MSP to collect, capture, process, maintain, and re-produce any newly required records. Based on comments received regarding system installation or upgrades that may be needed to meet the requirements of the rules, the Commission is doubling its estimate of programming burden hours associated with technology improvements to be 320 hours, rather than 160 hours.

The Commission received no comments with respect to its programming wage estimate of $60 per hour. Accordingly, the Commission has revised only the estimate of the start-up burden associated with the required technological improvements with respect to the number of burden hours. The Commission estimates that the start-up burden would be $19,200 [$60 × 320 hours] per affected registrant or $2,400,000 in the aggregate for all registrants.

2. Duties NPRM

The burden associated with regulations proposed in the Duties NPRM will result from the development of the required policies and procedures, satisfaction of various reporting obligations, and the documentation of required testing.

The Working Group commented that the Commission's average personnel cost estimate of $20,450 per effected entity significantly understates the cost of compliance with the proposed rules for commercial firms that are deemed SDs or MSPs. Specifically, the Working Group stated that a commercial energy firm will require at least five new fulltime employees at 1,800 hours per year, not the 204.5 hours per year estimated by the Commission; and the Commission's analysis does not consider any necessary information technology expenditures or third-party costs.

The Working Group also commented that quarterly documentation of risk management testing should be 200 personnel-hours per quarter at a cost of $96,000 per year for each registrant, rather than 1 personnel-hour per quarter at a cost of $400 per year as estimated by the Commission.

With respect to the reporting requirements proposed in the Duties NPRM, The Working Group argued that Risk Exposure Reports should be provided to senior management and governing body annually, not quarterly because quarterly reporting would be too costly and burdensome.

With respect to the documentation of testing requirements proposed in the Duties NPRM, The Working Group recommended that both the frequency and the scope of audits of the risk management program be left to the discretion of registrants in order to lessen the cost and administrative burden imposed by the proposed rules. Cargill recommended that testing of the risk management program be required annually rather than quarterly. Cargill stated that a quarterly requirement is excessive and unduly expensive. MetLife stated that monthly testing of position limit monitoring procedures and quarterly testing of the risk management program may be excessive, costly, and overly burdensome for some MSPs and that the frequency of testing should be determined by the MSP based on the extent of its swap activities.

In the Duties NPRM, the burden per registrant was estimated to be 204.5

[197] *See* Derivatives Clearing Organization General Provisions and Core Principals, 76 FR at 69428.

hours per year, at an annual cost of $20,450. Based on comments received, as discussed above, the Commission is changing the required risk management testing from quarterly to annually. The Commission also is accepting The Working Group's contention that it will take more than 160 hours annually to draft, file, and update the Risk Management Program materials, including the entity's position limit procedures and its business continuity and disaster recovery plan. While the Commission does not agree with the estimate that the new rules will require at least five new fulltime employees at 1,800 hours per year, the Commission accepts that on average it will take 900 hours to comply with the information collection required by these provisions. The Commission also agrees with The Working Group's revised estimation of 200 hours for documentation of risk management testing and is increasing its estimate from four hours. Finally, the Commission is increasing its estimate of the burden hours associated with quarterly documentation of position limit compliance from two hours to 10 hours to account for the required testing. Accordingly, the Commission has revised its overall burden estimate to be 1148.5 hours per year per registrant, at an annual cost of $114,850. The aggregate cost for all registrants (with a revised estimate of 125 SDs and MSPs) is 143,562.5 burden hours and $14,356,250 [143,562.5 × $100 per hour].

3. SD/MSP Conflicts NPRM and FCM/IB Conflicts NPRM

The Commission received no comments related to its estimates of the information collection burden with respect to either the SD/MSP Conflicts NPRM or the FCM/IB Conflicts NPRM. Accordingly, the only change that the Commission is making to its estimation of burdens associated with its Conflicts rules is the change to reflect the new estimate of the number of SDs and MSPs. The Commission estimates the overall burden to be 44.5 hours per year per SD and MSP, at an annual cost of $4,450 [44.5 × $100 per hour], and the aggregate cost for all SDs and MSPs (with a revised estimate of 125 SDs and MSPs) is 5562.5 burden hours and $556,250 [5562.5 × $100 per hour]. There are currently 159 registered FCMs and 1,645 registered IBs that will be required to comply with the proposed conflicts of interest provisions (or a total of 1,804 registrants). The Commission estimates the burden to be 44.5 hours, at an annual cost of $4,450 for each FCM and IB, and the aggregate cost for all FCMs and IBs is 80,278 burden hours and $8,027,800 [80,278 burden hours × $100 per hour].

4. CCO NPRM

With respect to the annual compliance report requirement in the CCO NPRM, NSCP commented the level of detail required by the annual report would impose unnecessary burdens on the CCO with little offsetting benefits. NSCP argues that a better approach would be to require a review of the adequacy of policies and the effectiveness of their implementation. EEI commented that the annual report requirements would be so lengthy and detailed that the usefulness of the annual report would be greatly diminished. The Working Group recommended that the Commission provide a standardized form for the annual report because such would mutually benefit the Commission and registrants. The Working Group also believes the annual report as proposed would be unnecessarily exhaustive, and without a materiality limitation, the report would be of limited use to the Commission and costly for firms to produce. The Working Group also objected to the requirement that firms preserve all materials relating to the preparation of an annual report because such would not promote any compliance policy other than facilitating regulatory enforcement actions. The Working Group believes that the scope of provisions means that a firm will spend considerable resources to meet its obligations under the compliance report, and preparation of the report will be quite expensive because the scope of policies and procedures will be very broad. The Working Group estimates that the burden of preparing a report is, at a minimum, 160 hours, 4 times the Commission's estimate.

FIA and SIFMA provided the following revised cost assessment: Form 8–R and related matters are 10 hours, not 1 hour; preparing, updating and maintaining policies and procedures is 1000 hours, not 80 hours; preparing the annual report is 500 hours not 40 hours; annually amending the annual report is 50 hours and not 5 hours; and recordkeeping is closer to 500 hours, not 10 hours. Therefore, FIA and SIFMA estimate that the total cost per registrant is closer to $800,000 and the total to the industry is $350 million.

Despite the fact that FIA and SIFMA did not provide an explanation for any of their revised burden estimates, the Commission is accepting their arguments, in part, and is revising its burden estimate to reflect some of their comments.

The Commission is not modifying the amount of time required to prepare and file a Form 8–R designating the chief compliance officer. This form requests only the information necessary about the individual designated as CCO that is necessary for the Commission to appropriately exercise its statutory registration and compliance oversight functions. This information generally includes the name, addresses, location of records, regulatory and disciplinary histories, and other similarly straightforward matters—all of which should be in the possession of the applicant and readily available for the applicant to provide. Most notably, the PRA estimates provided for these forms are averages that do not necessarily reflect the actual time expended by each and every individual to complete the forms.

The Commission is modifying its burden estimate for the amount of time it will take to draft and update compliance policies from 80 hours annually to 900 hours, which reflects half of a full-time employee's time. Additionally, the Commission is revising the burden estimate associated with preparing and furnishing to the Commission an annual report that describes the respondent's compliance policies and resources and the respondent's compliance with the CEA and Commission regulations. The Commission had estimated that it would take 40 hours per year. The revised estimate would double that number to 80 hours per year, which is in line with estimates made by the DCO final rulemaking. The Commission is maintaining its original estimate for the time required to amend a previously furnished annual report when material errors or omissions are identified at 5 hours annually, but the Commission is doubling the time estimate required to maintain records related to respondent's compliance policies and annual reports from 10 hours to 20 hours. With regard to recordkeeping required under the CCO rules, the Commission notes that much of the burden associated with this requirement has been included in the overall recordkeeping estimates for SDs and MSPs, and in existing regulations for FCMs, all of which require general business records to be kept.

There are 159 FCMs currently registered with the Commission and it is anticipated that there will be approximately 125 SDs and MSPs that will register with the Commission. Thus, the total number of respondents is expected to be 284. Based on comments received and the changes to the rules discussed above, the Commission has revised its estimate of the burden

associated with the regulations to be 1,006 hours, at a cost of $100,600 annually for each respondent. Based upon the above, the aggregate cost for all respondents is 285,704 burden hours [1,006 hours × 284 respondents] and $28,570,400 [285,704 burden hours × $100 per hour].

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Conflicts of interest, Reporting and recordkeeping requirements.

17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

17 CFR Part 23

Antitrust, Commodity futures, Conduct standards, Conflict of Interests, Major swap participants, Reporting and recordkeeping, Swap dealers, Swaps.

For the reasons stated in the preamble, the CFTC amends 17 CFR parts 1, 3, and 23 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 5, 6, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6*i*, 6j, 6k, 6*l*, 6m, 6n, 6*o*, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 9a, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 18, 19, 21, 23 and 24, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

■ 2. Section 1.71 is added to read as follows:

§ 1.71 Conflicts of interest policies and procedures by futures commission merchants and introducing brokers.

(a) *Definitions.* For purposes of this section, the following terms shall be defined as provided.

(1) *Affiliate.* This term means, with respect to any person, a person controlling, controlled by, or under common control with, such person.

(2) *Business trading unit.* This term means any department, division, group, or personnel of a futures commission merchant or introducing broker or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of, any pricing (excluding price verification for risk management purposes), trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a futures commission merchant or introducing broker or any of its affiliates.

(3) *Clearing unit.* This term means any department, division, group, or personnel of a futures commission merchant or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of, any proprietary or customer clearing activities on behalf of a futures commission merchant or any of its affiliates.

(4) *Derivative.* This term means:

(i) A contract for the purchase or sale of a commodity for future delivery;

(ii) A security futures product;

(iii) A swap;

(iv) Any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; and

(v) Any commodity option authorized under section 4c of the Act; and (vi) any leverage transaction authorized under section 19 of the Act.

(5) *Non-research personnel.* This term means any employee of the business trading unit or clearing unit, or any other employee of the futures commission merchant or introducing broker, other than an employee performing a legal or compliance function, who is not directly responsible for, or otherwise not directly involved in, research or analysis intended for inclusion in a research report.

(6) *Public appearance.* This term means any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons (individuals or entities), or interview or appearance before one or more representatives of the media, radio, television or print media, or the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning a derivatives transaction. This term does not include a password-protected Webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current research report or other documentation that contains the required applicable disclosures, and that the research analyst appearing at the event corrects and updates during the public appearance any disclosures in the research report that are inaccurate, misleading, or no longer applicable.

(7) *Research analyst.* This term means the employee of a futures commission merchant or introducing broker who is primarily responsible for, and any employee who reports directly or indirectly to such research analyst in connection with, preparation of the substance of a research report relating to any derivative, whether or not any such person has the job title of ''research analyst.''

(8) *Research department.* This term means any department or division that is principally responsible for preparing the substance of a research report relating to any derivative on behalf of a futures commission merchant or introducing broker, including a department or division contained in an affiliate of a futures commission merchant or introducing broker.

(9) *Research report.* This term means any written communication (including electronic) that includes an analysis of the price or market for any derivative, and that provides information reasonably sufficient upon which to base a decision to enter into a derivatives transaction. This term does not include:

(i) Communications distributed to fewer than 15 persons;

(ii) Commentaries on economic, political or market conditions;

(iii) Statistical summaries of multiple companies' financial data, including listings of current ratings;

(iv) Periodic reports or other communications prepared for investment company shareholders or commodity pool participants that discuss individual derivatives positions in the context of a fund's past performance or the basis for previously-made discretionary decisions;

(v) Any communications generated by an employee of the business trading unit that is conveyed as a solicitation for entering into a derivatives transaction, and is conspicuously identified as such; and

(vi) Internal communications that are not given to current or prospective customers.

(b) *Policies and procedures.* (1) Except as provided in paragraph (b)(2) of this section, each futures commission merchant and introducing broker subject to this rule must adopt and implement written policies and procedures reasonably designed to ensure that the futures commission merchant or introducing broker and its employees comply with the provisions of this rule.

(2) Small Introducing Brokers. An introducing broker that has generated, over the preceding 3 years, $5 million or less in aggregate gross revenues from its activities as an introducing broker must establish structural and institutional safeguards reasonably

designed to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or derivative are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons.

(c) *Research analysts and research reports.* (1) *Restrictions on relationship with research department.* (i) Non-research personnel shall not direct a research analyst's decision to publish a research report of the futures commission merchant or introducing broker, and non-research personnel shall not direct the views and opinions expressed in a research report of the futures commission merchant or introducing broker.

(ii) No research analyst may be subject to the supervision or control of any employee of the futures commission merchant's or introducing broker's business trading unit or clearing unit, and no employee of the business trading unit or clearing unit may have any influence or control over the evaluation or compensation of a research analyst.

(iii) Except as provided in paragraph (c)(1)(iv) of this section, non-research personnel, other than the board of directors and any committee thereof, shall not review or approve a research report of the futures commission merchant or introducing broker before its publication.

(iv) Non-research personnel may review a research report before its publication as necessary only to verify the factual accuracy of information in the research report, to provide for non-substantive editing, to format the layout or style of the research report, or to identify any potential conflicts of interest, provided that:

(A) Any written communication between non-research personnel and research department personnel concerning the content of a research report must be made either through authorized legal or compliance personnel of the futures commission merchant or introducing broker or in a transmission copied to such personnel; and

(B) Any oral communication between non-research personnel and research department personnel concerning the content of a research report must be documented and made either through authorized legal or compliance personnel acting as an intermediary or in a conversation conducted in the presence of such personnel.

(2) *Restrictions on communications.* Any written or oral communication by a research analyst to a current or prospective customer relating to any derivative must not omit any material fact or qualification that would cause the communication to be misleading to a reasonable person.

(3) *Restrictions on research analyst compensation.* A futures commission merchant or introducing broker may not consider as a factor in reviewing or approving a research analyst's compensation his or her contributions to the futures commission merchant's or introducing broker's trading or clearing business. Except for communicating client or customer feedback, ratings and other indicators of research analyst performance to research department management, no employee of the business trading unit or clearing unit of the futures commission merchant or introducing broker may influence the review or approval of a research analyst's compensation.

(4) *Prohibition of promise of favorable research.* No futures commission merchant or introducing broker may directly or indirectly offer favorable research, or threaten to change research, to an existing or prospective customer as consideration or inducement for the receipt of business or compensation.

(5) *Disclosure requirements.* (i) *Ownership and material conflicts of interest.* A futures commission merchant or introducing broker must disclose in research reports and a research analyst must disclose in public appearances whether the research analyst maintains a financial interest in any derivative of a type, class, or category that the research analyst follows, and the general nature of the financial interest.

(ii) *Prominence of disclosure.* Disclosures and references to disclosures must be clear, comprehensive, and prominent. With respect to public appearances by research analysts, the disclosures required by paragraph (c)(5) of this section must be conspicuous.

(iii) *Records of public appearances.* Each futures commission merchant and introducing broker must maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure requirements under paragraph (c)(5) of this section.

(iv) *Third-party research reports.* (A) For the purposes of paragraph (c)(5)(iv) of this section, ''independent third-party research report'' shall mean a research report, in respect of which the person or entity producing the report:

(*1*) Has no affiliation or business or contractual relationship with the distributing futures commission merchant or introducing broker, or that futures commission merchant's or introducing broker's affiliates, that is reasonably likely to inform the content of its research reports; and

(*2*) Makes content determinations without any input from the distributing futures commission merchant or introducing broker or from the futures commission merchant's or introducing broker's affiliates.

(B) Subject to paragraph (c)(5)(iv)(C) of this section, if a futures commission merchant or introducing broker distributes or makes available any independent third-party research report, the futures commission merchant or introducing broker must accompany the research report with, or provide a web address that directs the recipient to, the current applicable disclosures, as they pertain to the futures commission merchant or introducing broker, required by this section. Each futures commission merchant and introducing broker must establish written policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.

(C) The requirements of paragraph (c)(5)(iv)(B) of this section shall not apply to independent third-party research reports made available by a futures commission merchant or introducing broker to its customers:

(*1*) Upon request; or

(*2*) Through a Web site maintained by the futures commission merchant or introducing broker.

(6) *Prohibition of retaliation against research analysts.* No futures commission merchant or introducing broker, and no employee of a futures commission merchant or introducing broker who is involved with the futures commission merchant's or introducing broker's trading or clearing activities, may, directly or indirectly, retaliate against or threaten to retaliate against any research analyst employed by the futures commission merchant or introducing broker or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made, in good faith, by the research analyst that may adversely affect the futures commission merchant's or introducing broker's present or prospective trading or clearing activities.

(7) *Small Introducing Brokers.* An introducing broker that has generated, over the preceding 3 years, $5 million or less in aggregate gross revenues from its activities as an introducing broker is

exempt from the requirements set forth in this paragraph (c).

(d) *Clearing activities.* (1) No futures commission merchant shall permit any affiliated swap dealer or major swap participant to directly or indirectly interfere with, or attempt to influence, the decision of the clearing unit personnel of the futures commission merchant to provide clearing services and activities to a particular customer, including but not limited to a decision relating to the following:

(i) Whether to offer clearing services and activities to a particular customer;

(ii) Whether to accept a particular customer for the purposes of clearing derivatives;

(iii) Whether to submit a customer's transaction to a particular derivatives clearing organization;

(iv) Whether to set or adjust risk tolerance levels for a particular customer;

(v) Whether to accept certain forms of collateral from a particular customer; or

(vi) Whether to set a particular customer's fees for clearing services based upon criteria that are not generally available and applicable to other customers of the futures commission merchant.

(2) Each futures commission merchant shall create and maintain an appropriate informational partition between business trading units of an affiliated swap dealer or major swap participant and clearing unit personnel of the futures commission merchant to reasonably ensure compliance with the Act and the prohibitions specified in paragraph (d)(1) of this section. At a minimum, such informational partitions shall require that:

(i) No employee of a business trading unit of an affiliated swap dealer or major swap participant may review or approve the provision of clearing services and activities by clearing unit personnel of the futures commission merchant, make any determination regarding whether the futures commission merchant accepts clearing customers, or in any way condition or tie the provision of trading services upon or to the provision of clearing services or otherwise participate in the provision of clearing services by improperly incentivizing or encouraging the use of the affiliated futures commission merchant. Any employee of a business trading unit of an affiliated swap dealer or major swap participant may participate in the activities of the futures commission merchant as necessary for (A) participating in default management undertaken by a derivatives clearing organization during an event of default; and (B) transferring, liquidating, or hedging any proprietary or customer positions during an event of default;

(ii) No employee of a business trading unit of an affiliated swap dealer or major swap participant shall supervise, control, or influence any employee of a clearing unit of the futures commission merchant; and

(iii) No employee of the business trading unit of an affiliated swap dealer or major swap participant shall influence or control compensation or evaluation of any employee of the clearing unit of the futures commission merchant.

(e) *Undue influence on customers.* Each futures commission merchant and introducing broker must adopt and implement written policies and procedures that mandate the disclosure to its customers of any material incentives and any material conflicts of interest regarding the decision of a customer as to the trade execution and/or clearing of the derivatives transaction.

(f) *Records.* All records that a futures commission merchant or introducing broker is required to maintain pursuant to this regulation shall be maintained in accordance with Commission Regulation § 1.31 and shall be made available promptly upon request to representatives of the Commission.

PART 3—REGISTRATION

■ 3. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6*i*, 6k, 6m, 6n, 6*o*, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

■ 4. Amend § 3.1 by revising paragraph (a)(1) and by adding paragraphs (h) and (i) to read as follows:

§ 3.1 Definitions.

(a) * * *

(1) If the entity is organized as a sole proprietorship, the proprietor and chief compliance officer; if a partnership, any general partner and chief compliance officer; if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, chief compliance officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, chief compliance officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, in addition, any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

* * * * *

(h) *Swaps activities.* Swaps activities means, with respect to a registrant, such registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives.

(i) *Board of directors.* Board of directors means the board of directors, board of governors, or equivalent governing body of a registrant.

■ 5. Add § 3.3 to read as follows:

§ 3.3 Chief compliance officer.

(a) *Designation.* Each futures commission merchant, swap dealer, and major swap participant shall designate an individual to serve as its chief compliance officer, and provide the chief compliance officer with the responsibility and authority to develop, in consultation with the board of directors or the senior officer, appropriate policies and procedures to fulfill the duties set forth in the Act and Commission regulations relating to the swap dealer's or major swap participant's swaps activities, or to the futures commission merchant's business as a futures commission merchant and to ensure compliance with the Act and Commission regulations relating to the swap dealer's or major swap participant's swaps activities, or to the futures commission merchant's business as a futures commission merchant.

(1) The chief compliance officer shall report to the board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant. The board of directors or the senior officer shall appoint the chief compliance officer, shall approve the compensation of the chief compliance officer, and shall meet with the chief compliance officer at least once a year and at the election of the chief compliance officer.

(2) Only the board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant may remove the chief compliance officer.

(b) *Qualifications.* The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual disqualified, or subject to disqualification, from registration under section 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.

(c) *Submission with registration.* Each application for registration as a futures commission merchant under § 3.10, a swap dealer under § 23.21, or a major swap participant under § 23.21, must include a designation of a chief compliance officer by submitting a Form 8–R for the chief compliance officer as a principal of the applicant pursuant to § 3.10(a)(2).

(d) *Chief compliance officer duties.* The chief compliance officer's duties shall include, but are not limited to:

(1) Administering the registrant's policies and procedures reasonably designed to ensure compliance with the Act and Commission regulations;

(2) In consultation with the board of directors or the senior officer, resolving any conflicts of interest that may arise;

(3) Taking reasonable steps to ensure compliance with the Act and Commission regulations relating to the swap dealer's or major swap participant's swaps activities, or to the futures commission merchant's business as a futures commission merchant;

(4) Establishing procedures, in consultation with the board of directors or the senior officer, for the remediation of noncompliance issues identified by the chief compliance officer through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

(5) Establishing procedures, in consultation with the board of directors or the senior officer, for the handling, management response, remediation, retesting, and closing of noncompliance issues; and

(6) Preparing and signing the annual report required under paragraphs (e) and (f) of this section.

(e) *Annual report.* The chief compliance officer annually shall prepare a written report that covers the most recently completed fiscal year of the futures commission merchant, swap dealer, or major swap participant, and provide the annual report to the board of directors or the senior officer. The annual report shall, at a minimum:

(1) Contain a description of the written policies and procedures, including the code of ethics and conflicts of interest policies, of the futures commission merchant, swap dealer, or major swap participant;

(2) Review each applicable requirement under the Act and Commission regulations, and with respect to each:

(i) Identify the policies and procedures that are reasonably designed to ensure compliance with the requirement under the Act and Commission regulations;

(ii) Provide an assessment as to the effectiveness of these policies and procedures; and

(iii) Discuss areas for improvement, and recommend potential or prospective changes or improvements to its compliance program and resources devoted to compliance;

(3) List any material changes to compliance policies and procedures during the coverage period for the report;

(4) Describe the financial, managerial, operational, and staffing resources set aside for compliance with respect to the Act and Commission regulations, including any material deficiencies in such resources; and

(5) Describe any material non-compliance issues identified, and the corresponding action taken.

(f) *Furnishing the annual report to the Commission.* (1) Prior to furnishing the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant for its review. Furnishing the annual report to the board of directors or the senior officer shall be recorded in the board minutes or otherwise, as evidence of compliance with this requirement.

(2) The annual report shall be furnished electronically to the Commission not more than 90 days after the end of the fiscal year of the futures commission merchant, swap dealer, or major swap participant, simultaneously with the submission of Form 1–FR–FCM, as required under § 1.10(b)(2)(ii), simultaneously with the Financial and Operational Combined Uniform Single Report, as required under § 1.10(h), or simultaneously with the financial condition report, as required under section 4s(f) of the Act, as applicable.

(3) The report shall include a certification by the chief compliance officer or chief executive officer of the registrant that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete.

(4) The futures commission merchant, swap dealer, or major swap participant shall promptly furnish an amended annual report if material errors or omissions in the report are identified. An amendment must contain the certification required under paragraph (f)(3) of this section.

(5) A futures commission merchant, swap dealer, or major swap participant may request from the Commission an extension of time to furnish its annual report, provided the registrant's failure to timely furnish the report could not be eliminated by the registrant without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission.

(6) A futures commission merchant, swap dealer, or major swap participant may incorporate by reference sections of an annual report that has been furnished within the current or immediately preceding reporting period to the Commission. If the futures commission merchant, swap dealer, or major swap participant is registered in more than one capacity with the Commission, and must submit more than one annual report, an annual report submitted as one registrant may incorporate by reference sections in the annual report furnished within the current or immediately preceding reporting period as the other registrant.

(g) *Recordkeeping.* (1) The futures commission merchant, swap dealer, or major swap participant shall maintain:

(i) A copy of the registrant's policies and procedures reasonably designed to ensure compliance with the Act and Commission regulations;

(ii) Copies of materials, including written reports provided to the board of directors or the senior officer in connection with the review of the annual report under paragraph (e) of this section; and

(iii) Any records relevant to the annual report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are created, sent or received in connection with the annual report and contain conclusions, opinions, analyses, or financial data related to the annual report.

(2) All records or reports that a futures commission merchant, swap dealer, or major swap participant are required to maintain pursuant to this section shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of the applicable prudential regulator, as defined in 1a(39) of the Act.

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 6. The authority citation for part 23 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, and 21 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

■ 7. Add Subpart F, §§ 23.200, 23.201, 23.202, 23.203, 23.204, 23.205, and 23.206 to read as follows:

Subpart F—Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

Sec.
23.200 Definitions.
23.201 Required records.
23.202 Daily trading records.
23.203 Records; retention and inspection.
23.204 Reporting to swap data repositories.
23.205 Real-time public reporting.
23.206 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight to establish an alternative compliance schedule to comply with daily trading records.

Subpart F—Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

§ 23.200 Definitions.

For purposes of subpart F, the following terms shall be defined as provided.

(a) *Business trading unit* means any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs, or exercises supervisory authority over the performance of, any pricing (excluding price verification for risk management purposes), trading, sales, purchasing, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a registrant.

(b) *Clearing unit* means any department, division, group, or personnel of a registrant or any of its affiliates, whether or not identified as such, that performs any proprietary or customer clearing activities on behalf of a registrant.

(c) *Complaint* means any formal or informal complaint, grievance, criticism, or concern communicated to the swap dealer or major swap participant in any format relating to, arising from, or in connection with, any trading conduct or behavior or with the swap dealer or major swap participant's performance (or failure to perform) any of its regulatory obligations, and includes any and all observations, comments, remarks, interpretations, clarifications, notes, and examinations as to such conduct or behavior communicated or documented by the complainant, swap dealer, or major swap participant.

(d) *Executed* means the completion of the execution process.

(e) *Execution* means, with respect to a swap, an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law.

(f) *Governing body.* This term means:

(1) A board of directors;

(2) A body performing a function similar to a board of directors;

(3) Any committee of a board or body; or

(4) The chief executive officer of a registrant, or any such board, body, committee, or officer of a division of a registrant, provided that the registrant's swaps activities for which registration with the Commission is required are wholly contained in a separately identifiable division.

(g) *Prudential regulator* has the meaning given to such term in section 1a(39) of the Commodity Exchange Act and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the swap dealer or major swap participant.

(h) *Registered entity* has the meaning given to such term in section 1a(40) of the Commodity Exchange Act, and includes boards of trade designated as contract markets, derivatives clearing organizations, swap execution facilities, and swap data repositories.

(i) *Related cash or forward transaction* means a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a swap where the swap and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another.

(j) *Swaps activities* means, with respect to a registrant, such registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives.

(k) *Swap confirmation* means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all the terms of the swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).

§ 23.201 Required records.

(a) *Transaction and position records.* Each swap dealer and major swap participant shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all its swaps activities. Such records shall include:

(1) *Transaction records.* Records of each transaction, including all documents on which transaction information is originally recorded. Such records shall be kept in a form and manner identifiable and searchable by transaction and by counterparty, and shall include:

(i) All documents customarily generated in accordance with market practice that demonstrate the existence and nature of an order or transaction, including, but not limited to, records of all orders (filled, unfilled, or cancelled); correspondence; journals; memoranda; ledgers; confirmations; risk disclosure documents; statements of purchase and sale; contracts; invoices; warehouse receipts; documents of title; and

(ii) The daily trading records required to be kept in accordance with § 23.202.

(2) *Position records.* Records of each position held by each swap dealer and major swap participant, identified by product and counterparty, including records reflecting whether each position is ''long'' or ''short'' and whether the position is cleared. Position records shall be linked to transaction records in a manner that permits identification of the transactions that established the position.

(3) *Records of transactions executed on a swap execution facility or designated contract market or cleared by a derivatives clearing organization.* Records of each transaction executed on a swap execution facility or designated contract market or cleared by a derivatives clearing organization maintained in compliance with the Act and Commission regulations.

(b) *Business records.* Each swap dealer and major swap participant shall keep full, complete, and systematic records of all activities related to its business as a swap dealer or major swap participant, including but not limited to:

(1) *Governance.* (i) Minutes of meetings of the governing body and relevant committee minutes, including handouts and presentation materials;

(ii) Organizational charts for its governing body and relevant

committees, business trading unit, clearing unit, risk management unit, and all other relevant units or divisions;

(iii) Biographies or resumes of managers, senior supervisors, officers, and directors;

(iv) Job descriptions for manager, senior supervisor, officer, and director positions, including job responsibilities and scope of authority;

(v) Internal and external audit, risk management, compliance, and consultant reports (including management responses); and

(vi) Business and strategic plans for the business trading unit.

(2) *Financial records.* (i) Records reflecting all assets and liabilities, income and expenses, and capital accounts as required by the Act and Commission regulations; and

(ii) All other financial records required to be kept under the Act and Commission regulations.

(3) *Complaints.* (i) A record of each complaint received by the swap dealer or major swap participant concerning any partner, member, officer, employee, or agent. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of all persons identified in the complaint; a description of the nature of the complaint; the disposition of the complaint, and the date the complaint was resolved.

(ii) A record indicating that each counterparty of the swap dealer or major swap participant has been provided with a notice containing the physical address, email or other widely available electronic address, and telephone number of the department of the swap dealer or major swap participant to which any complaints may be directed.

(4) *Marketing and sales materials.* All marketing and sales presentations, advertisements, literature, and communications, and a record documenting that the swap dealer or major swap participant has complied with, or adopted policies and procedures reasonably designed to establish compliance with, all applicable Federal requirements, Commission regulations, and the rules of any self-regulatory organization of which the swap dealer or major swap participant is a member.

(c) *Records of data reported to a swap data repository.* With respect to each swap, each swap dealer and major swap participant shall identify, retain, and produce for inspection all information and data required to be reported in accordance with part 45 of this chapter, along with a record of the date and time the swap dealer or major swap participant made the report.

(d) *Records of real-time reporting data.* Each swap dealer and major swap participant shall identify, retain, and produce for inspection all information and data required to be reported in accordance with part 43 of this chapter, along with a record of the date and time the swap dealer or major swap participant made the report.

§ 23.202 Daily trading records.

(a) *Daily trading records for swaps.* Each swap dealer and major swap participant shall make and keep daily trading records of all swaps it executes, including all documents on which transaction information is originally recorded. Each swap dealer and major swap participant shall ensure that its records include all information necessary to conduct a comprehensive and accurate trade reconstruction for each swap. Each swap dealer and major swap participant shall maintain each transaction record in a manner identifiable and searchable by transaction and counterparty.

(1) *Pre-execution trade information.* Each swap dealer and major swap participant shall make and keep pre-execution trade information, including, at a minimum, records of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a swap, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media. Such records shall include, but are not limited to:

(i) Reliable timing data for the initiation of the trade that would permit complete and accurate trade reconstruction; and

(ii) A record of the date and time, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device, for each quotation provided to, or received from, the counterparty prior to execution.

(2) *Execution trade information.* Each swap dealer and major swap participant shall make and keep trade execution records, including:

(i) All terms of each swap, including all terms regarding payment or settlement instructions, initial and variation margin requirements, option premiums, payment dates, and any other cash flows;

(ii) The trade ticket for each swap (which, together with the time of execution of each swap, shall be immediately recorded electronically for further processing);

(iii) The unique swap identifier, as required by § 45.4(a), for each swap;

(iv) A record of the date and time of execution of each swap, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device;

(v) The name of the counterparty with which each such swap was executed, including its unique counterparty identifier, as required by § 45.4(b);

(vi) The date and title of the agreement to which each swap is subject, including but not limited to, any swap trading relationship documentation and credit support arrangements;

(vii) The product name of each swap, including its unique product identifier, as required by § 45.4(c);

(viii) The price at which the swap was executed;

(ix) Fees or commissions and other expenses, identified by transaction; and

(x) Any other information relevant to the swap.

(3) *Post-execution trade information.* Each swap dealer and major swap participant shall make and keep records of post-execution trade information containing an itemized record of all relevant post-trade processing and events.

(i) Records of post-trade processing and events shall include all of the following, as applicable:

(A) Confirmation;
(B) Termination;
(C) Novation;
(D) Amendment;
(E) Assignment;
(F) Netting;
(G) Compression;
(H) Reconciliation;
(I) Valuation;
(J) Margining;
(K) Collateralization; and
(L) Central clearing.

(ii) Each swap dealer and major swap participant shall make and keep a record of all swap confirmations, along with the date and time, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device; and

(iii) Each swap dealer and major swap participant shall make and keep a record of each swap portfolio reconciliation, including the number of portfolio reconciliation discrepancies and the number of swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty);

(iv) Each swap dealer and major swap participant shall make and keep a

record of each swap portfolio compression exercise in which it participates, including the dates of the compression, the swaps included in the compression, the identity of the counterparties participating in the exercise, the results of the compression, and the name of the third-party entity performing the compression, if any; and

(v) Each swap dealer and major swap participant shall make and keep a record of each swap that it centrally clears, categorized by transaction and counterparty.

(4) *Ledgers.* Each swap dealer and major swap participant shall make and keep ledgers (or other records) reflecting the following:

(i) Payments and interest received;

(ii) Moneys borrowed and moneys loaned;

(iii) The daily calculation of the value of each outstanding swap;

(iv) The daily calculation of current and potential future exposure for each counterparty;

(v) The daily calculation of initial margin to be posted by the swap dealer or major swap participant for each counterparty and the daily calculation of initial margin to be posted by each counterparty;

(vi) The daily calculation of variation margin payable to or receivable from each counterparty;

(vii) The daily calculation of the value of all collateral, before and after haircuts, held by or posted by the swap dealer or major swap participant;

(viii) All transfers of collateral, including any substitutions of collateral, identifying in sufficient detail the amounts and types of collateral transferred; and

(ix) All charges against and credits to each counterparty's account, including funds deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on transactions.

(b) *Daily trading records for related cash and forward transactions.* Each swap dealer and major swap participant shall make and keep daily trading records of all related cash or forward transactions it executes, including all documents on which the related cash or forward transaction information is originally recorded. Each swap dealer and major swap participant shall ensure that its records include all information necessary to conduct a comprehensive and accurate trade reconstruction for each related cash or forward transaction. Each swap dealer and major swap participant shall maintain each transaction record in a manner identifiable and searchable by transaction and by counterparty. Such records shall include, but are not limited to:

(1) A record of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the conclusion of a related cash or forward transaction, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media;

(2) Reliable timing data for the initiation of the transaction that would permit complete and accurate trade reconstruction;

(3) A record of the date and time, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device, for each quotation provided to, or received from, the counterparty prior to execution;

(4) A record of the date and time of execution of each related cash or forward transaction, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device;

(5) All terms of each related cash or forward transaction;

(6) The price at which the related cash or forward transaction was executed; and

(7) A record of the daily calculation of the value of the related cash or forward transaction and any other relevant financial information.

§ 23.203 Records; retention and inspection.

(a) *Location of records.* (1) *Records.* All records required to be kept by a swap dealer or major swap participant by the Act and by Commission regulations shall be kept at the principal place of business of the swap dealer or major swap participant or such other principal office as shall be designated by the swap dealer or major swap participant. If the principal place of business is outside of the United States, its territories or possessions, then upon the request of a Commission representative, the swap dealer or major swap participant must provide such records as requested at the place in the United States, its territories, or possessions designated by the representative within 72 hours after receiving the request.

(2) *Contact information.* Each swap dealer and major swap participant shall maintain for each of its offices a listing, by name or title, of each person at that office who, without delay, can explain the types of records the swap dealer or major swap participant maintains at that office and the information contained in those records.

(b) *Record retention.* (1) The records required to be maintained by this chapter shall be maintained in accordance with the provisions of § 1.31, except as provided in paragraphs (b)(2) and (3) of this section. All records required to be kept by the Act and by Commission regulations shall be kept for a period of five years from the date the record was made and shall be readily accessible during the first two (2) years of the five-year period. All such records shall be open to inspection by any representative of the Commission, the United States Department of Justice, or any applicable prudential regulator. Records relating to swaps defined in section 1a(47)(A)(v) shall be open to inspection by any representative of the Commission, the United States Department of Justice, the Securities and Exchange Commission, or any applicable prudential regulator.

(2) Records of any swap or related cash or forward transaction shall be kept until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction, and for a period of five years after such date. Such records shall be readily accessible until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and during the first two years of the 5-year period following such date. Provided, however, that records of oral communications communicated by telephone, voicemail, mobile device, or other digital or electronic media pursuant to § 23.202(a)(1) and (b)(1) shall be kept for a period of one year. All such records shall be open to inspection by any representative of the Commission, the United States Department of Justice, or any applicable prudential regulator. Records relating to swaps defined in section 1a(47)(A)(v) shall be open to inspection by any representative of the Commission, the United States Department of Justice, the Securities and Exchange Commission, or any applicable prudential regulator.

(3) Records of any swap data reported in accordance with part 45 of this chapter shall be maintained in accordance with the requirements of § 45.2 of this chapter.

§ 23.204 Reports to swap data repositories.

(a) *Reporting of swap transaction data to swap data repositories.* Each swap dealer and major swap participant shall report all information and data in accordance with part 45 of this chapter.

(b) *Electronic reporting of swap transaction data.* Each swap dealer and major swap participant shall have the electronic systems and procedures

necessary to transmit electronically all information and data required to be reported in accordance with part 45 of this chapter.

§ 23.205 Real-time public reporting.

(a) *Real-time public reporting of swap transaction and pricing data.* Each swap dealer and major swap participant shall report all information and swap transaction and pricing data required to be reported in accordance with the real-time public recording requirements in part 43 of this chapter.

(b) *Electronic reporting of swap transaction data.* Each swap dealer and major swap participant shall have the electronic systems and procedures necessary to transmit electronically all information and data required to be reported in accordance with part 43 of this chapter.

§ 23.206 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight to establish an alternative compliance schedule to comply with daily trading records.

(a) The Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight or such other employee or employees as the Director may designate from time to time, the authority to establish an alternative compliance schedule for requirements of § 23.202 that are found to be technologically or economically impracticable for an affected swap dealer or major swap participant that seeks, in good faith, to comply with the requirements of § 23.202 within a reasonable time period beyond the date on which compliance by such swap dealer or major swap participant is otherwise required.

(b) A request for an alternative compliance schedule under this section shall be acted upon by the Director of the Division of Swap Dealer and Intermediary Oversight within 30 days from the time such a request is received, or it shall be deemed approved.

(c) Relief granted under this section shall not cause a registrant to be out of compliance or deemed in violation of any registration requirements.

(d) Notwithstanding any other provision of this section, in any case in which a Commission employee delegated authority under this section believes it appropriate, he or she may submit to the Commission for its consideration the question of whether an alternative compliance schedule should be established. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section.

■ 8. Add Subpart J, consisting of §§ 23.600 through 23.607, to read as follows:

Subpart J—Duties of Swap Dealers and Major Swap Participants

Sec.
23.600 Risk Management Program for swap dealers and major swap participants.
23.601 Monitoring of position limits.
23.602 Diligent supervision.
23.603 Business continuity and disaster recovery.
23.604 [Reserved]
23.605 Conflicts of interest policies and procedures.
23.606 General information: availability for disclosure and inspection.
23.607 Antitrust considerations.

Subpart J—Duties of Swap Dealers and Major Swap Participants

§ 23.600 Risk Management Program for swap dealers and major swap participants.

(a) *Definitions.* For purposes of subpart J, the following terms shall be defined as provided.

(1) *Affiliate. This term means,* with respect to any person, a person controlling, controlled by, or under common control with, such person.

(2) *Business trading unit. This term means* any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of any pricing (excluding price verification for risk management purposes), trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a registrant.

(3) *Clearing unit. This term means* any department, division, group, or personnel of a registrant or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of any proprietary or customer clearing activities on behalf of a registrant.

(4) *Governing body. This term means:*

(1) A board of directors;

(2) A body performing a function similar to a board of directors;

(3) Any committee of a board or body; or

(4) The chief executive officer of a registrant, or any such board, body, committee, or officer of a division of a registrant, provided that the registrant's swaps activities for which registration with the Commission is required are wholly contained in a separately identifiable division.

(5) *Prudential regulator.* This term has the same meaning as section 1a(39) of the Commodity Exchange Act and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the swap dealer or major swap participant.

(6) *Senior management. This term means,* with respect to a registrant, any officer or officers specifically granted the authority and responsibility to fulfill the requirements of senior management by the registrant's governing body.

(7) *Swaps activities. This term means,* with respect to a registrant, such registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives.

(b) *Risk management program.* (1) *Purpose.* Each swap dealer and major swap participant shall establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the swaps activities of the swap dealer or major swap participant. For purposes of this regulation, such policies and procedures shall be referred to collectively as a ''Risk Management Program.''

(2) *Written policies and procedures.* Each swap dealer and major swap participant shall maintain written policies and procedures that describe the Risk Management Program of the swap dealer or major swap participant.

(3) *Approval by governing body.* The Risk Management Program and the written risk management policies and procedures shall be approved, in writing, by the governing body of the swap dealer or major swap participant.

(4) *Furnishing to the Commission.* Each swap dealer and major swap participant shall furnish a copy of its written risk management policies and procedures to the Commission, or to a futures association registered under section 17 of the Act, if directed by the Commission, upon application for registration and thereafter upon request.

(5) *Risk management unit.* As part of its Risk Management Program, each swap dealer and major swap participant shall establish and maintain a risk management unit with sufficient authority; qualified personnel; and financial, operational, and other resources to carry out the risk management program established pursuant to this regulation. The risk management unit shall report directly to senior management and shall be

independent from the business trading unit.

(c) *Elements of the Risk Management Program.* The Risk Management Program of each swap dealer and major swap participant shall include, at a minimum, the following elements:

(1) *Identification of risks and risk tolerance limits.* (i) The Risk Management Program should take into account market, credit, liquidity, foreign currency, legal, operational, settlement, and any other applicable risks together with a description of the risk tolerance limits set by the swap dealer or major swap participant and the underlying methodology in written policies and procedures. The risk tolerance limits shall be reviewed and approved quarterly by senior management and annually by the governing body. Exceptions to risk tolerance limits shall be subject to written policies and procedures.

(ii) The Risk Management Program shall take into account risks posed by affiliates and the Risk Management Program shall be integrated into risk management at the consolidated entity level.

(iii) The Risk Management Program shall include policies and procedures for detecting breaches of risk tolerance limits set by the swap dealer or major swap participant, and alerting supervisors within the risk management unit and senior management, as appropriate.

(2) *Periodic Risk Exposure Reports.* (i) The risk management unit of each swap dealer and major swap participant shall provide to senior management and to its governing body quarterly written reports setting forth the market, credit, liquidity, foreign currency, legal, operational, settlement, and any other applicable risk exposures of the swap dealer or major swap participant; any recommended or completed changes to the Risk Management Program; the recommended time frame for implementing recommended changes; and the status of any incomplete implementation of previously recommended changes to the Risk Management Program. For purposes of this regulation, such reports shall be referred to as ''Risk Exposure Reports.'' The Risk Exposure Reports also shall be provided to the senior management and the governing body immediately upon detection of any material change in the risk exposure of the swap dealer or major swap participant.

(ii) *Furnishing to the Commission.* Each swap dealer and major swap participant shall furnish copies of its Risk Exposure Reports to the Commission within five (5) business days of providing such reports to its senior management.

(3) *New product policy.* The Risk Management Program of each swap dealer and major swap participant shall include a new product policy that is designed to identify and take into account the risks of any new product prior to engaging in transactions involving the new product. The new product policy should include the following elements:

(i) Consideration of the type of counterparty with which the new product will be transacted; the product's characteristics and economic function; and whether the product requires a novel pricing methodology or presents novel legal and regulatory issues.

(ii) Identification and analysis of all relevant risks associated with the new product and how they will be managed. The risk analysis should include an assessment, if relevant, of any product, market, credit, liquidity, foreign currency, legal, operational, settlement, and any other risks associated with the new product. Product risk characteristics may include, if relevant, volatility, non-linear price characteristics, jump-to-default risk, and any correlation between the value of the product and the counterparty's creditworthiness.

(iii) An assessment, signed by a supervisor in the risk management unit, as to whether the new product would materially alter the overall entity-wide risk profile of the swap dealer or major swap participant. If the new product would materially alter the overall risk profile of the swap dealer or major swap participant, the new product must be pre-approved by the governing body before any transactions are effectuated.

(iv) A requirement that the risk management unit review the risk analysis to identify any necessary modifications to the Risk Management Program and implement such modifications prior to engaging in transactions involving the new product.

(v) Notwithstanding the foregoing, a swap dealer's or major swap participant's new product policy may include provisions permitting limited preliminary approval of new products—

(A) At a risk level that would not be material to the swap dealer or major swap participant; and

(B) Solely in order to provide the swap dealer or major swap participant with the opportunity to facilitate development of appropriate operational and risk management processes for such product.

(4) *Specific risk management considerations.* The Risk Management Program of each swap dealer and major swap participant shall include, but not be limited to, policies and procedures necessary to monitor and manage the following risks:

(i) *Market risk.* Market risk policies and procedures shall take into account, among other things:

(A) Daily measurement of market exposure, including exposure due to unique product characteristics, volatility of prices, basis and correlation risks, leverage, sensitivity of option positions, and position concentration, to comply with market risk tolerance limits;

(B) Timely and reliable valuation data derived from, or verified by, sources that are independent of the business trading unit, and if derived from pricing models, that the models have been independently validated by qualified, independent external or internal persons; and

(C) Periodic reconciliation of profits and losses resulting from valuations with the general ledger.

(ii) *Credit risk.* Credit risk policies and procedures shall take into account, among other things:

(A) Daily measurement of overall credit exposure to comply with counterparty credit limits;

(B) Monitoring and reporting of violations of counterparty credit limits performed by personnel that are independent of the business trading unit; and

(C) Regular valuation of collateral used to cover credit exposures and safeguarding of collateral to prevent loss, disposal, rehypothecation, or use unless appropriately authorized.

(iii) *Liquidity risk.* Liquidity risk policies and procedures shall take into account, among other things:

(A) Daily measurement of liquidity needs;

(B) Assessing procedures to liquidate all non-cash collateral in a timely manner and without significant effect on price; and

(C) Application of appropriate collateral haircuts that accurately reflect market and credit risk.

(iv) *Foreign currency risk.* Foreign currency risk policies and procedures shall take into account, among other things:

(A) Daily measurement of the amount of capital exposed to fluctuations in the value of foreign currency to comply with applicable limits; and

(B) Establishment of safeguards against adverse currency fluctuations.

(v) *Legal risk.* Legal risk policies and procedures shall take into account, among other things:

(A) Determinations that transactions and netting arrangements entered into have a sound legal basis; and

(B) Establishment of documentation tracking procedures designed to ensure the completeness of relevant documentation and to resolve any documentation exceptions on a timely basis.

(vi) *Operational risk.* Operational risk policies and procedures shall take into account, among other things:

(A) Secure and reliable operating and information systems with adequate, scalable capacity, and independence from the business trading unit;

(B) Safeguards to detect, identify, and promptly correct deficiencies in operating and information systems; and

(C) Reconciliation of all data and information in operating and information systems.

(vii) *Settlement risk.* Settlement risk policies and procedures shall take into account, among other things:

(A) Establishment of standard settlement instructions with each counterparty;

(B) Procedures to track outstanding settlement items and aging information in all accounts, including nostro and suspense accounts; and

(C) Procedures to ensure timely payments to counterparties and to resolve any late payments.

(5) *Use of central counterparties.* Each swap dealer and major swap participant shall establish policies and procedures relating to its use of central counterparties. Such policies and procedures shall:

(i) Require the use of central counterparties where clearing is required pursuant to Commission regulation or order, unless the counterparty has properly invoked a clearing exemption under Commission regulations;

(ii) Set forth the conditions for the voluntary use of central counterparties for clearing when available as a means of mitigating counterparty credit risk; and

(iii) Require diligent investigation into the adequacy of the financial resources and risk management procedures of any central counterparty through which the swap dealer or major swap participant clears.

(6) *Compliance with margin and capital requirements.* Each swap dealer and major swap participant shall satisfy all capital and margin requirements established by the Commission or prudential regulator, as applicable.

(7) *Monitoring of compliance with Risk Management Program.* Each swap dealer and major swap participant shall establish policies and procedures to detect violations of the Risk Management Program; to encourage employees to report such violations to senior management, without fear of retaliation; and to take specified disciplinary action against employees who violate the Risk Management Program.

(d) *Business trading unit.* Each swap dealer and major swap participant shall establish policies and procedures that, at a minimum:

(1) Require all trading policies be approved by the governing body of the swap dealer or major swap participant;

(2) Require that traders execute transactions only with counterparties for whom credit limits have been established;

(3) Provide specific quantitative or qualitative limits for traders and personnel able to commit the capital of the swap dealer or major swap participant;

(4) Monitor each trader throughout the trading day to prevent the trader from exceeding any limit to which the trader is subject, or from otherwise incurring unauthorized risk;

(5) Require each trader to follow established policies and procedures for executing and confirming all transactions;

(6) Establish means to detect unauthorized trading activities or any other violation of policies and procedures;

(7) Ensure that all trade discrepancies are documented and, other than immaterial, clerical errors, are brought to the immediate attention of management of the business trading unit;

(8) Ensure that broker statements and payments to brokers are periodically audited by persons independent of the business trading unit;

(9) Ensure that use of trading programs is subject to policies and procedures governing the use, supervision, maintenance, testing, and inspection of the program; and

(10) Require the separation of personnel in the business trading unit from personnel in the risk management unit.

(e) *Review and testing.* (1) Risk Management Programs shall be reviewed and tested on at least an annual basis, or upon any material change in the business of the swap dealer or major swap participant that is reasonably likely to alter the risk profile of the swap dealer or major swap participant.

(2) The annual reviews of the Risk Management Program shall include an analysis of adherence to, and the effectiveness of, the risk management policies and procedures, and any recommendations for modifications to the Risk Management Program. The annual testing shall be performed by qualified internal audit staff that are independent of the business trading unit being audited or by a qualified third party audit service reporting to staff that are independent of the business trading unit. The results of the quarterly reviews of the Risk Management Program shall be promptly reported to and reviewed by, the chief compliance officer, senior management, and governing body of the swap dealer or major swap participant.

(3) Each swap dealer and major swap participant shall document all internal and external reviews and testing of its Risk Management Program and written risk management policies and procedures including the date of the review or test; the results; any deficiencies identified; the corrective action taken; and the date that corrective action was taken. Such documentation shall be provided to Commission staff, upon request.

(f) *Distribution of risk management policies and procedures.* The Risk Management Program shall include procedures for the timely distribution of its written risk management policies and procedures to relevant supervisory personnel. Each swap dealer and major swap participant shall maintain records of the persons to whom the risk management policies and procedures were distributed and when they were distributed.

(g) *Recordkeeping.* (1) Each swap dealer and major swap participant shall maintain copies of all written approvals required by this section.

(2) All records or reports that a swap dealer or major swap participant is required to maintain pursuant to this regulation shall be maintained in accordance with Commission Regulation § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

§ 23.601 Monitoring of position limits.

(a) Each swap dealer and major swap participant shall establish and enforce written policies and procedures that are reasonably designed to monitor for and prevent violations of applicable position limits established by the Commission, a designated contract market, or a swap execution facility, and to monitor for and prevent improper reliance upon any exemptions or exclusions from such position limits. For purposes of this regulation, such policies and procedures shall be referred to as ''Position Limit Procedures.'' The Position Limit Procedures shall be incorporated into

the Risk Management Program of the swap dealer or major swap participant.

(b) For purposes of the Position Limit Procedures, each swap dealer and major swap participant shall convert all swap positions into equivalent futures positions using the methodology set forth in Commission regulations.

(c) Each swap dealer and major swap participant shall provide training to all relevant personnel on applicable position limits on an annual basis and shall promptly notify personnel upon any change to applicable position limits. Each swap dealer and major swap participant shall maintain records of such training and notifications including the substance of the training, the identity of those receiving training, and the identity of those notified of changes to applicable position limits.

(d) Each swap dealer and major swap participant shall diligently monitor its trading activities and diligently supervise the actions of its partners, officers, employees, and agents to ensure compliance with the Position Limit Procedures of the swap dealer or major swap participant.

(e) The Position Limit Procedures of each swap dealer and major swap participant shall implement an early warning system designed to detect and alert its senior management when position limits are in danger of being breached (such as when trading has reached a percentage threshold of the applicable position limit, and when position limits have been exceeded). Any detected violation of applicable position limits shall be reported promptly to the firm's governing body. Any detected violation of applicable position limits, other than on-exchange violations reported to the Commission by a designated contract market or a swap execution facility, shall be reported promptly to the Commission. Each swap dealer and major swap participant shall maintain a record of any early warning received, any position limit violation detected, any action taken as a result of either, and the date action was taken.

(f) Each swap dealer and major swap participant that transacts in instruments for which position limits have been established by the Commission, a designated contract market, or a swap execution facility shall test its Position Limit Procedures for adequacy and effectiveness at least once each calendar quarter and maintain records of such tests; the results thereof; any action that is taken as a result thereof including, without limitation, any recommendations for modifications to the firm's Position Limit Procedures; and the date action was taken.

(g) Each swap dealer and major swap participant shall document its compliance with applicable position limits established by the Commission, a designated contract market, or a swap execution facility in a written report on a quarterly basis. Such report shall be promptly reported to and reviewed by the chief compliance officer, senior management, and governing body of the swap dealer or major swap participant, and shall include, without limitation, a list of all early warnings received, all position limit violations, the action taken in response, the results of the quarterly position limit testing required by this regulation, any deficiencies in the Position Limit Procedures, the status of any pending amendments to the Position Limit Procedures, and any action taken to amend the Position Limit Procedures to ensure compliance with all applicable position limits. Each swap dealer and major swap participant shall retain a copy of this report.

(h) On an annual basis, each swap dealer and major swap participant shall audit its Position Limit Procedures as part of the audit of its Risk Management Program required by Commission regulations.

(i) All records required to be maintained pursuant to these regulations shall be maintained in accordance with Commission Regulation § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

§ 23.602 Diligent supervision.

(a) *Supervision.* Each swap dealer and major swap participant shall establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function). Such system shall be reasonably designed to achieve compliance with the requirements of the Commodity Exchange Act and Commission regulations.

(b) *Supervisory System.* Such supervisory system shall provide, at a minimum, for the following:

(1) The designation, where applicable, of at least one person with authority to carry out the supervisory responsibilities of the swap dealer or major swap participant for all activities relating to its business as a swap dealer or major swap participant.

(2) The use of reasonable efforts to determine that all supervisors are qualified and meet such standards of training, experience, competence, and such other qualification standards as the Commission finds necessary or appropriate.

§ 23.603 Business continuity and disaster recovery.

(a) *Business continuity and disaster recovery plan required.* Each swap dealer and major swap participant shall establish and maintain a written business continuity and disaster recovery plan that outlines the procedures to be followed in the event of an emergency or other disruption of its normal business activities. The business continuity and disaster recovery plan shall be designed to enable the swap dealer or major swap participant to continue or to resume any operations by the next business day with minimal disturbance to its counterparties and the market, and to recover all documentation and data required to be maintained by applicable law and regulation.

(b) *Essential components.* The business continuity and disaster recovery plan of a swap dealer or major swap participant shall include the following components:

(1) Identification of the documents, data, facilities, infrastructure, personnel and competencies essential to the continued operations of the swap dealer or major swap participant and to fulfill the obligations of the swap dealer or major swap participant.

(2) Identification of the supervisory personnel responsible for implementing each aspect of the business continuity and disaster recovery plan and the emergency contacts required to be provided pursuant to this regulation.

(3) A plan to communicate with the following persons in the event of an emergency or other disruption, to the extent applicable to the operations of the swap dealer or major swap participant: employees; counterparties; swap data repositories; execution facilities; trading facilities; clearing facilities; regulatory authorities; data, communications and infrastructure providers and other vendors; disaster recovery specialists and other persons essential to the recovery of documentation and data, the resumption of operations, and compliance with the Commodity Exchange Act and Commission regulations.

(4) Procedures for, and the maintenance of, back-up facilities, systems, infrastructure, alternative staffing and other resources to achieve the timely recovery of data and documentation and to resume operations as soon as reasonably

possible and generally within the next business day.

(5) Maintenance of back-up facilities, systems, infrastructure and alternative staffing arrangements in one or more areas that are geographically separate from the swap dealer's or major swap participant's primary facilities, systems, infrastructure and personnel (which may include contractual arrangements for the use of facilities, systems and infrastructure provided by third parties).

(6) Back-up or copying, with sufficient frequency, of documents and data essential to the operations of the swap dealer or major swap participant or to fulfill the regulatory obligations of the swap dealer or major swap participant and storing the information off-site in either hard-copy or electronic format.

(7) Identification of potential business interruptions encountered by third parties that are necessary to the continued operations of the swap dealer or major swap participant and a plan to minimize the impact of such disruptions.

(c) *Distribution to employees.* Each swap dealer and major swap participant shall distribute a copy of its business continuity and disaster recovery plan to relevant employees and promptly provide any significant revision thereto. Each swap dealer and major swap participant shall maintain copies of the business continuity and disaster recovery plan at one or more accessible off-site locations. Each swap dealer and major swap participant shall train relevant employees on applicable components of the business continuity and disaster recovery plan.

(d) *Commission notification.* Each swap dealer and major swap participant shall promptly notify the Commission of any emergency or other disruption that may affect the ability of the swap dealer or major swap participant to fulfill its regulatory obligations or would have a significant adverse effect on the swap dealer or major swap participant, its counterparties, or the market.

(e) *Emergency contacts.* Each swap dealer and major swap participant shall provide to the Commission the name and contact information of two employees who the Commission can contact in the event of an emergency or other disruption. The individuals identified shall be authorized to make key decisions on behalf of the swap dealer or major swap participant and have knowledge of the firm's business continuity and disaster recovery plan. The swap dealer or major swap participant shall provide the Commission with any updates to this information promptly.

(f) *Review and modification.* A member of the senior management of each swap dealer and major swap participant shall review the business continuity and disaster recovery plan annually or upon any material change to the business. Any deficiencies found or corrective action taken shall be documented.

(g) *Testing and audit.* Each business continuity and disaster recovery plan shall be tested annually by qualified, independent internal personnel or a qualified third party service. The date the testing was performed shall be documented, together with the nature and scope of the testing, any deficiencies found, any corrective action taken, and the date that corrective action was taken. Each business continuity and disaster recovery plan shall be audited at least once every three years by a qualified third party service. The date the audit was performed shall be documented, together with the nature and scope of the audit, any deficiencies found, any corrective action taken, and the date that corrective action was taken.

(h) *Business continuity and disaster recovery plans required by other regulatory authorities.* A swap dealer or major swap participant shall comply with the requirements of this regulation in addition to any business continuity and disaster recovery requirements that are imposed upon the swap dealer or major swap participant by its prudential regulator or any other regulatory or self-regulatory authority.

(i) *Recordkeeping.* The business continuity and disaster recovery plan of the swap dealer and major swap participant and all other records required to be maintained pursuant to this section shall be maintained in accordance with Commission Regulation § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

§ 23.604 [Reserved]

§ 23.605 Conflicts of interest policies and procedures.

(a) *Definitions.* For purposes of this section, the following terms shall be defined as provided.

(1) *Affiliate. This term means,* with respect to any person, a person controlling, controlled by, or under common control with, such person.

(2) *Business trading unit. This term means* any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of, any pricing (excluding price verification for risk management purposes), trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a swap dealer or major swap participant or any of its affiliates.

(3) *Clearing unit. This term means* any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of, any proprietary or customer clearing activities on behalf of a swap dealer or major swap participant or any of its affiliates.

(4) *Derivative. This term means:*

(i) A contract for the purchase or sale of a commodity for future delivery;

(ii) A security futures product;

(iii) A swap;

(iv) Any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act;

(v) Any commodity option authorized under section 4c of the Act; and

(vi) Any leverage transaction authorized under section 19 of the Act.

(5) *Non-research personnel.* This term means any employee of the business trading unit or clearing unit, or any other employee of the swap dealer or major swap participant, other than an employee performing a legal or compliance function, who is not directly responsible for, or otherwise not involved in, research or analysis intended for inclusion in a research report.

(6) *Public appearance. This term means* any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons (individuals or entities), or interview or appearance before one or more representatives of the media, radio, television or print media, or the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning a derivatives transaction. This term does not include a password-protected Webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current research report or other documentation that contains the required applicable disclosures, and that the research analyst appearing at the event corrects and updates during the public appearance any disclosures in the research report that are

inaccurate, misleading, or no longer applicable.

(7) *Research analyst. This term means* the employee of a swap dealer or major swap participant who is primarily responsible for, and any employee who reports directly or indirectly to such research analyst in connection with, preparation of the substance of a research report relating to any derivative, whether or not any such person has the job title of ''research analyst.''

(8) *Research department. This term means* any department or division that is principally responsible for preparing the substance of a research report relating to any derivative on behalf of a swap dealer or major swap participant, including a department or division contained in an affiliate of a swap dealer or major swap participant.

(9) *Research report. This term means* any written communication (including electronic) that includes an analysis of the price or market for any derivative, and that provides information reasonably sufficient upon which to base a decision to enter into a derivatives transaction. This term does not include:

(i) Communications distributed to fewer than 15 persons;

(ii) Commentaries on economic, political, or market conditions;

(iii) Statistical summaries of multiple companies' financial data, including listings of current ratings;

(iv) Periodic reports or other communications prepared for investment company shareholders or commodity pool participants that discuss individual derivatives positions in the context of a fund's past performance or the basis for previously-made discretionary decisions;

(v) Any communications generated by an employee of the business trading unit that is conveyed as a solicitation for entering into a derivatives transaction, and is conspicuously identified as such; and

(vi) Internal communications that are not given to current or prospective customers.

(b) *Policies and procedures.* Each swap dealer and major swap participant subject to this rule must adopt and implement written policies and procedures reasonably designed to ensure that the swap dealer or major swap participant and its employees comply with the provisions of this rule.

(c) *Research analysts and research reports.* (1) *Restrictions on relationship with research department.* (i) Non-research personnel shall not direct a research analyst's decision to publish a research report of the swap dealer or major swap participant, and non-research personnel shall not direct the views and opinions expressed in a research report of the swap dealer or major swap participant.

(ii) No research analyst may be subject to the supervision or control of any employee of the swap dealer's or major swap participant's business trading unit or clearing unit, and no employee of the business trading unit or clearing unit may have any influence or control over the evaluation or compensation of a research analyst.

(iii) Except as provided in paragraph (c)(1)(iv) of this section, non-research personnel, other than the board of directors and any committee thereof, shall not review or approve a research report of the swap dealer or major swap participant before its publication.

(iv) Non-research personnel may review a research report before its publication as necessary only to verify the factual accuracy of information in the research report, to provide for non-substantive editing, to format the layout or style of the research report, or to identify any potential conflicts of interest, provided that:

(A) Any written communication between non-research personnel and research department personnel concerning the content of a research report must be made either through authorized legal or compliance personnel of the swap dealer or major swap participant or in a transmission copied to such personnel; and

(B) Any oral communication between non-research personnel and research department personnel concerning the content of a research report must be documented and made either through authorized legal or compliance personnel acting as an intermediary or in a conversation conducted in the presence of such personnel.

(2) *Restrictions on communications.* Any written or oral communication by a research analyst to a current or prospective counterparty relating to any derivative must not omit any material fact or qualification that would cause the communication to be misleading to a reasonable person.

(3) *Restrictions on research analyst compensation.* A swap dealer or major swap participant may not consider as a factor in reviewing or approving a research analyst's compensation his or her contributions to the swap dealer's or major swap participant's trading or clearing business. Except for communicating client or customer feedback, ratings, and other indicators of research analyst performance to research department management, no employee of the business trading unit or clearing unit of the swap dealer or major swap participant may influence the review or approval of a research analyst's compensation.

(4) *Prohibition of promise of favorable research.* No swap dealer or major swap participant may directly or indirectly offer favorable research, or threaten to change research, to an existing or prospective counterparty as consideration or inducement for the receipt of business or compensation.

(5) *Disclosure requirements.* (i) *Ownership and material conflicts of interest.* A swap dealer or major swap participant must disclose in research reports and a research analyst must disclose in public appearances:

(A) Whether the research analyst maintains a financial interest in any derivative of a type, class, or, category that the research analyst follows, and the general nature of the financial interest; and

(B) Any other actual, material conflicts of interest of the research analyst or swap dealer or major swap participant of which the research analyst has knowledge at the time of publication of the research report or at the time of the public appearance.

(ii) *Prominence of disclosure.* Disclosures and references to disclosures must be clear, comprehensive, and prominent. With respect to public appearances by research analysts, the disclosures required by this paragraph (c)(5) must be conspicuous.

(iii) *Records of public appearances.* Each swap dealer and major swap participant must maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure requirements under this paragraph (c)(5).

(iv) *Third-party research reports.* (A) For the purposes of this paragraph (c)(5)(iv), ''independent third-party research report'' shall mean a research report, in respect of which the person or entity producing the report:

(*1*) Has no affiliation or business or contractual relationship with the distributing swap dealer or major swap participant, or that swap dealer's or major swap participant's affiliates, that is reasonably likely to inform the content of its research reports; and

(*2*) Makes content determinations without any input from the distributing swap dealer or major swap participant or that swap dealer's or major swap participant's affiliates.

(B) Subject to paragraph (c)(5)(iv)(C) of this section, if a swap dealer or major swap participant distributes or makes available any independent third-party

research report, the swap dealer or major swap participant must accompany the research report with, or provide a Web address that directs the recipient to, the current applicable disclosures, as they pertain to the swap dealer or major swap participant, required by this section. Each swap dealer and major swap participant must establish written policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.

(C) The requirements of paragraph (c)(5)(iv)(B) of this section shall not apply to independent third-party research reports made available by a swap dealer or major swap participant to its customers:

(*1*) Upon request; or

(*2*) Through a Web site maintained by the swap dealer or major swap participant.

(6) *Prohibition of retaliation against research analysts.* No swap dealer or major swap participant, and no employee of a swap dealer or major swap participant who is involved with the swap dealer's or major swap participant's pricing, trading, or clearing activities, may, directly or indirectly, retaliate against or threaten to retaliate against any research analyst employed by the swap dealer or major swap participant or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made, in good faith, by the research analyst that may adversely affect the swap dealer's or major swap participant's present or prospective pricing, trading, or clearing activities.

(d) *Clearing activities.* (1) No swap dealer or major swap participant shall directly or indirectly interfere with or attempt to influence the decision of the clearing unit of any affiliated clearing member of a derivatives clearing organization to provide clearing services and activities to a particular customer, including but not limited to a decision relating to the following:

(i) Whether to offer clearing services and activities to a particular customer;

(ii) Whether to accept a particular customer for the purposes of clearing derivatives;

(iii) Whether to submit a customer's transaction to a particular derivatives clearing organization;

(iv) Whether to set or adjust risk tolerance levels for a particular customer;

(v) Whether to accept certain forms of collateral from a particular customer; or

(vi) Whether to set a particular customer's fees for clearing services based upon criteria that are not generally available and applicable to other customers of the swap dealer or major swap participant.

(2) Each swap dealer and major swap participant shall create and maintain an appropriate informational partition, as specified in section 4s(j)(5)(A) of the Act, between business trading units of the swap dealer or major swap participant and clearing units of any affiliated clearing member of a derivatives clearing organization to reasonably ensure compliance with the Act and the prohibitions specified in paragraph (d)(1) of this section. At a minimum, such informational partitions shall require that no employee of a business trading unit of a swap dealer or major swap participant shall supervise, control, or influence any employee of the clearing unit of any affiliated clearing member of a derivatives clearing organization.

(e) *Undue influence on counterparties.* Each swap dealer and major swap participant must adopt and implement written policies and procedures that mandate the disclosure to its counterparties of any material incentives and any material conflicts of interest regarding the decision of a counterparty:

(1) Whether to execute a derivative on a swap execution facility or designated contract market; or

(2) Whether to clear a derivative through a derivatives clearing organization.

(f) All records that a swap dealer or major swap participant is required to maintain pursuant to this regulation shall be maintained in accordance with Commission Regulation § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of the applicable prudential regulator, as defined in 7 U.S.C. 1a(39).

§ 23.606 General information: availability for disclosure and inspection.

(a) *Disclosure of information.* (1) Each swap dealer and major swap participant shall make available for disclosure to and inspection by the Commission and its prudential regulator, as applicable, all information required by, or related to, the Commodity Exchange Act and Commission regulations, including:

(i) The terms and condition of its swaps;

(ii) Its swaps trading operations, mechanisms, and practices;

(iii) Financial integrity and risk management protections relating to swaps; and

(iv) Any other information relevant to its trading in swaps.

(2) Such information shall be made available promptly, upon request, to Commission staff and the staff of the applicable prudential regulator, at such frequency and in such manner as is set forth in the Commodity Exchange Act, Commission regulations, or the regulations of the applicable prudential regulator.

(b) *Ability to provide information.* (1) Each swap dealer and major swap participant shall establish and maintain reliable internal data capture, processing, storage, and other operational systems sufficient to capture, process, record, store, and produce all information necessary to satisfy its duties under the Commodity Exchange Act and Commission regulations. Such systems shall be designed to produce the information within the time frames set forth in the Commodity Exchange Act and Commission regulations or upon request, as applicable.

(2) Each swap dealer and major swap participant shall establish, implement, maintain, and enforce written procedures for the capture, processing, recording, storage, and production of all information necessary to satisfy its duties under the Commodity Exchange Act and Commission regulations.

(c) *Record retention.* All records or reports that a swap dealer or major swap participant is required to maintain pursuant to this regulation shall be maintained in accordance with Commission Regulation § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

§ 23.607 Antitrust considerations.

(a) No swap dealer or major swap participant shall adopt any process or take any action that results in any unreasonable restraint of trade, or impose any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the Commodity Exchange Act.

(b) Consistent with its obligations under paragraph (a) of this section, each swap dealer and major swap participant shall adopt policies and procedures to prevent actions that result in unreasonable restraint of trade, or impose any material anticompetitive burden on trading or clearing.

Issued in Washington, DC, on February 23, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

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

Appendices to Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton and Wetjen voted in the affirmative; Commissioners Sommers and O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the internal business conduct rule, which will lower the risk that swap dealers pose to the rest of the economy. These rules are the result of a critical reform in the Dodd-Frank Wall Street reform and Consumer Protection Act (Dodd-Frank Act) where Congress gave the Commodity Futures Trading Commission (CFTC) authority to write rules overseeing swap dealer business conduct. This rule is a collection of five CFTC proposals in four key areas.

First, the final rule establishes a number of duties for swap dealers (SDs) and major swap participants (MSPs), including a risk management program with policies and procedures to monitor and manage the risks associated with their swap activities. Among the requirements are: (a) Ensuring the risk management program takes into account market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, settlement risk, and risk posed by traders; (b) establishing a system of diligent supervision by qualified personnel over the SD and MSP activities; and (c) ensuring risk management issues are elevated within management.

Second, the final rule establishes firewalls to protect against conflicts of interest that can arise between trading and research units of SDs, MSPs, futures commission merchants (FCMs), and introducing brokers. In addition, the rules establish a firewall between clearing and trading that will protect against conflicts of interest relating to a firm's clearing activities. A 2009 Commission study on harmonization between the Securities and Exchange Commission and the CFTC recommended that the Commission establish these firewalls, which are based upon similar protections in the securities markets.

Third, the final rule establishes the reporting, recordkeeping and daily trading requirements for SDs and MSPs. Importantly, this section creates an audit trail detailing the full history of trades so the SD or MSP can better ensure compliance internally, and, when appropriate, the CFTC can be a more effective cop on the beat.

Fourth, the final rule establishes requirements for the designation of a chief compliance officer of SDs, MSPs and FCMs. This compliance officer will ensure that the firm's policies and procedures comply with the CEA and Commission regulations. The officer will prepare an annual report describing the registrant's compliance with its own policies, as well as CEA and Commission regulations.

Appendix 3—Statement of Commissioner Scott O'Malia

The latest issue of The Economist features an article titled ''Over-regulated America'' [198] that features as its archetype for excessive and badly-written regulation our own Dodd-Frank Act. The problem, the article points out, is that rules that sound reasonable on their own may impose a huge collective burden due, in part, to their complexity. Part of the problem is that we, as The Economist points out, are under the impression that we can anticipate and regulate for every eventuality. In our hubris, The Economist warns, our overreaching tends to defeat our good intentions and creates loopholes and perhaps unintentional safe-harbors, leaving our rules ineffectual and subject to abuse. The solution The Economist offers isn't so unfamiliar, at least to this Commissioner. It is rather simple. It is just that: Rules need to be simple. Echoing President Obama's 2011 Executive Order 13563 ''Improving Regulation and Regulatory Review'' [199] (which applies equally to independent Federal agencies such as the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') per a subsequent Executive Order [200]), The Economist advises that we ought to cut out the verbiage and focus on writing rules that articulate broad goals and prescribe only what is strictly necessary to achieve them.

In my own words, in several prior statements, I have argued that we must ensure that regulations are accessible, consistent, written in plain language, guided by empirical data, and are easily understood. I cautioned that, with each piecemeal rulemaking, we risk creating redundancies and inconsistencies that result in costs—both opportunity costs and economic costs—without corresponding benefits. Consistent with Executive Order 13563, which reaffirms prior guidance on the subject of regulatory review issued in the 1993 Executive Order 12866 [201] as well as Office of Management and Budget (''OMB'') guidance to Federal agencies with respect to said Executive Order,[202] agencies like the CFTC must go out of their way to ensure responsible rulemaking by, among other things, undertaking thorough cost-benefit analyses, both qualitatively and quantitatively, to ensure that new rules do not impose unreasonable costs.

I accepted wholeheartedly the mission put upon this administration by the President to ''[T]o root out regulations that conflict, that are not worth the cost, or that are just plain dumb.'' [203] Today, in furtherance of that mission, I will not support the final rules governing various internal business conduct standards for futures commission merchants, introducing brokers, swap dealers and major swaps participants (the ''Internal Business Conduct Rules''). These rules fail to articulate necessary and clear performance objectives, are needlessly complex, and create a collective burden without the benefit of even an appropriate baseline cost-benefit analysis. The fact that OMB's Office of Information and Regulatory Affairs [204] has concurred [205] with our determination that this set of rules qualifies as a ''Major Rule'' under the Congressional Review Act with an annual effect on the economy of more than $100 million without a fulsome discussion of anticipated costs, let alone an analysis based on reasoned assumptions or evaluation of the impacts of this rulemaking against the pre-statutory baseline, is regulatory malpractice in my book. While we set the bar low here at the Commission for our cost-benefit analyses, and accept what is ''reasonably feasible,'' this rulemaking is nothing but unreasonably feeble.

After reviewing the Internal Business Conduct Rules, I have reached a tipping point and can no longer tolerate the application of such weak standards to analyzing the costs and benefits of our rulemakings. Our inability to develop a quantitative analysis, or to develop a reasonable comparative analysis of legitimate options, hurts the credibility of this Commission and undermines the quality of our rules. I believe it is time for professional help, and I will be following up this statement with a letter to the Director of the OMB seeking an independent review of the Internal Business Conduct Rules to determine whether or not this rulemaking fully complies with the President's Executive Orders and the OMB guidance found in OMB Circular A–4. To the extent that OMB finds any concerns with the Commission's economic analysis, I hope that it will provide specific recommendations as to how the Commission can improve its cost-benefit analysis and analytical capabilities.

Lest anyone think that I am inadvertently waiving a work-product or other privilege, the Commission's May 13, 2011 internal Staff Guidance on Cost-Benefit Considerations for Final Rulemakings under the Dodd-Frank Act (''Staff Guidance'') was made public as Exhibit 2 to the CFTC's Office of Inspector General's June 13, 2011 Review of Cost-Benefit Analyses Performed by the CFTC in

[198] *Over-regulated America,* Economist, Feb. 18, 2012, at 9.

[199] Exec. Order No. 13,563, 76 FR 3821 (Jan. 21, 2011).

[200] Exec. Order No. 13,579, 76 FR 41,587 (July 14, 2011).

[201] Exec. Order No. 12,866, 58 FR 51,735 (Oct. 4, 1993).

[202] OMB Circular A–4, *available at http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf.*

[203] Barack Obama, *Toward a 21st-Century Regulatory System,* Wall St. J., Jan. 18, 2011, at A17.

[204] The Office of Information and Regulatory Affairs (''OIRA''), among other things, reviews draft regulations under Executive Order 12866. *See* Office of Information and Regulatory Affairs (''OIRA'') Q & As, available at: *http://www.whitehouse.gov/omb/OIRA_QsandAs.*

[205] I use this term loosely since the only verification we received at the Commission was a perfunctory email from an OMB employee stating, ''OMB concurs that the rule is major.'' It is unclear as to what data OMB could have relied upon in reaching its conclusion.

Connection with Rulemakings Undertaken Pursuant to the Dodd-Frank Act, which is available on the CFTC's Web site.[206] While it is not my intent to walk you through the Staff Guidance (or the Inspector General's report for that matter), I do think it warrants attention for the inattention it gives to both the principles of Executive Orders 13563 and 12866 and OMB guidance found in Circular A–4 (''OMB Circular A–4''). More specifically, and among other things, the Staff Guidance provides that each rulemaking team should, ''incorporate the principles of Executive Order 13563 to the extent they are consistent with section 15(a) [of the Commodity Exchange Act] and it *is reasonably feasible* to do so.'' Keep in mind that while Section 15(a) of the Commodity Exchange Act requires the CFTC to consider the costs and benefits of its proposed regulations, the Commission has interpreted the language of section 15(a) to neither require quantification of such costs and benefits, nor to require the agency to determine whether the benefits exceed costs or whether the proposed rules are the most cost-effective means of reaching goals.[207] ''Rather, section 15 simply requires the Commission to 'consider the costs and benefits' of its action.'' [208] That was a direct quote from the **Federal Register**.

Further, under the Staff Guidance—and clearly consistent with the Commission's interpretation of section 15—rulemaking teams need only quantify costs and benefits ''to the extent it is *reasonably feasible and appropriate* to address comments received.'' As additional guidance, staff is advised that ''reasonably feasible and appropriate'' means ''the extent to which (i) certain analyses, quantitative or qualitative, is [sic] needed to address comments received (''appropriate'') and (ii) whether such an analysis may be performed with available resources (''reasonably feasible''). Accordingly, our interpretation of our duties pursuant to section 15(a) and Staff Guidance provides that we need not quantify the costs or benefits of our rules unless we need to do so in order to respond to comments, and that we can do so with whatever resources are immediately at our fingertips. As for the Executive Orders, it appears that we will incorporate their principles only when they neatly align with our own interpretation of section 15(a), and only when we can do so without utilizing the resources immediately within our coffers.

Setting the bar this low is pretty remarkable. Indeed, former Commissioner and Acting Chairman William P. Albrecht recently remarked that expecting any detailed cost-benefit analysis of the proposed Dodd-Frank rules is impossible in part because, ''[T]he CFTC has never had to develop CBA expertise.'' [209] Commissioner Albrecht advised that, ''A good starting point might be to require more detailed analysis of the costs of alternative means of accomplishing a particular goal. This would help the agency develop CBA expertise and should, over time, lead to a deeper understanding of the costs of regulation.'' [210]

I believe that Commissioner Albrecht's advice is already well-articulated in both Executive Orders and OMB Circular A–4 as incorporated directly into the Staff Guidance. However, the Commission skirts these requirements and apparently refuses to develop expertise. Instead, the Commission limits itself to responding to comments, but only when it doesn't require any analysis beyond that which it did for the proposal.

Additionally, as in today's final rulemaking, the Commission has determined, in contradiction of OMB guidance directly on point, that in setting the baseline for comparison of the costs and benefits of regulatory alternatives, it may set the ''baseline'' to incorporate the costs of statutorily mandated rulemakings, regardless of how the CFTC has interpreted the statutory goals and regardless of the existence of alternative means to comply with such goals. Thereby, the Commission is relying on an arbitrary presumption that, ''To the extent that * * * new regulations reflect the statutory requirements of the Dodd-Frank Act, they will not create costs and benefits beyond those resulting from Congress's statutory mandates in the Dodd-Frank Act.'' [211] What does this mean? Well, according to the Commission in this rulemaking, it means that for commenters who ''posit that there is no benefit to be derived from internal business conduct standards as mandated by Congress and that the mandated provisions do not generate sufficient benefits relative to costs or contribute to the purposes (e.g. mitigating systemic risk and enhancing transparency) of the Dodd-Frank Act. * * * these commenters' concerns fall outside the Commission's regulatory discretion to implement sections 4s and 4d of the CEA and fail to raise issues subject to consider[ation] under section 15(a).'' [212] That is, the Commission will ignore comments related to required rulemaking provisions that mirror statutory language in spite of the fact that the Commission always has some level of discretion in determining the means to achieve such mandates. Rather the Commission will consider comments on new regulations ''that reflect the Commission's own determinations regarding implementation of the Dodd-Frank Act's provisions. * * * It is these other costs and benefits * * * that the Commission considers with respect to the section 15(a) factors.'' [213] It is unacceptable that the Commission ignores pre-Dodd-Frank reality and establishes its own economic baseline for its rulemakings. This practice defies not only common sense, but rigorous and competent economic analysis as well.

I will briefly highlight how these rules not only fail to include a rational, rigorous, and sustainable cost-benefit analysis, but fail to articulate necessary and clear performance objectives, are complex, and create an unjustifiable cumulative burden within this rule and when considered with other CFTC regulations and those of prudential regulators.

I believe the Commission has failed to carefully and precisely identify a clear baseline against which the Commission measured costs and benefits and the range of alternatives under consideration in this rule. Specifically, the Commission's cost-benefit analysis with regard to this rule fails to comply with the basic direction in OMB Circular A–4 to establish an appropriate baseline that includes an evaluation of the pre-statutory baseline in light of the range of Commission discretion as to the manner in which the rules implement the statutory goals of section 4s.[214] The circular also directs the Commission to consider alternatives available ''for the key attributes or provisions of the rule.'' [215] The Circular goes on to recommend that, ''It is not adequate simply to report a comparison of the agency's preferred option to the chosen baseline. Whenever you report the benefits and the costs of alternative options, you should present both total and incremental benefits and costs.'' [216] It is at this most basic level of analysis where the Commission has failed to provide alternative options for consideration or has failed to justify its choice of regulation with a specific cost-benefit analysis.

In two examples articulated by the Commission, the Internal Business Conduct Rules dismisses out of hand, and without specific justification the concerns raised by two commenters: (1) The Federal Home Loan Banks who raised concerns regarding compliance burdens and duplicative nature of regulations for comparably regulated entities; and (2) The Working Group of Commercial Energy Firms, which raised concerns that the rules failed to provide benefits with regard to risk management and compliance that matched, much less exceeded, the cost of compliance. Both concerns were dismissed without consideration of alternatives and without any attempt to quantify the cited costs.

With regard to recordkeeping requirements, the Internal Business Conduct Rules impose a substantial burden on Swap

[206] Office of the Inspector General of the Commodity Futures Trading Commission, A Review of Cost-Benefit Analyses performed by the Commodity Futures Trading Commission in Connection with Rulemakings Undertaken Pursuant to the Dodd-Frank Act, June 13, 2011, available at: *www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oig_investigation_061311.pdf.*

[207] A New Regulatory Framework for Trading Facilities, Intermediaries and Clearing Organizations, 66 FR 14,262, 14,267 (March 9, 2001).

[208] *Id.*

[209] William P. Albrecht, Cost Benefit Analysis and the Commodity Futures Trading Commission (''CFTC''), Discussion Paper, May 2011, available at *http://www.rff.org/RFF/Documents/RFF-DP-11-24.pdf.*

[210] *Id.* at 9.

[211] *See* Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer, Final Rule, at Section IV of the Preamble.

[212] *Id.* at Section IV of the Cost Benefit Considerations, note 64.

[213] *Id.* at Section IV of the Preamble.

[214] OMB Circular A–4 at 15–16.

[215] *Id.* at 16.

[216] *Id.*

Dealers (''SDs'') and Major Swap Participants (''MSPs'') to maintain extensive audio recordings including the requirement to tag each taped conversation and make it searchable by transaction and counterparty. Understandably, section 4s(g) does require the maintenance of such daily trading records for each counterparty and that they be identifiable with each swap transaction. However, in spite of enormous technological challenges it is unclear as to whether or not the Commission undertook any independent effort to determine the technical challenges of implementing such a system, including, whether such technology currently exists, the costs of acquiring and installing such technology, and whether such a system could be developed and/or installed within the timetable set by the Commission. The Commission has failed the fundamental test in Circular A–4 to establish an appropriate baseline and consider a range of alternatives with associated costs and benefits. Although the Commission modified its original proposal to not require each telephone record to be kept as a single file, it fails to quantify the specific cost of complying with a costly and technically challenging mandate. Moreover, in determining that such audio recordings are to be maintained for a one-year period, the Commission provides no analytical support for this retention period over a more reasonable six-month period other than to say that such period will be ''most useful for the Commission's enforcement purposes.'' [217]

Further, the Commission also ignored commenters' requests to allow firms to rely on swap data repositories (''SDRs'') for recordkeeping requirements. The analysis states:

The Commission considered this alternative to its recordkeeping rules, but determined that it is premature at this time to permit SDs and MSPs to rely solely on SDRs to meet their recordkeeping obligations under the rules. * * * At present, SDRs are new entities under the Dodd-Frank Act with no track record of operations; and, for particular swap asset classes, SDRs have yet to be established.[218]

In addition to finalizing rules governing registration standards, duties and core principles for SDRs,[219] the Commission has already voted on the final rules that establish and compel the reporting of swap transaction information to SDRs for purposes of real-time public reporting (the ''Real-Time Reporting Rule'') and to ensure that complete data concerning swaps is available to regulators throughout the existence of each swap and for fifteen years following termination.[220] In addition, the track record of entities that will likely be our first registered SDRs is considered proven as data from these repositories in both rates and credit have been used to establish the foundation for today's re-proposal of Procedures to Establish Appropriate Minimum Block Sizes For Large Notional Off-Facility Swaps and Block Trades; Further Measures to Protect the Identities of Parties to Swap Transactions (the ''Block Proposal'').

If the Commission truly has doubts as to the fidelity and reliability SDR data, then it ought not to have relied upon it in a proposed rulemaking. That being said, although the analysis seems to indicate that the Commission considered alternatives, it is curious as to how the Commission came to the conclusion that the Internal Business Conduct Rules are cost-effective, given that they require firms to keep duplicative and redundant trade records when all trades must be reported to an SDR and stored by the SDR for the life of the swap, plus an additional fifteen years—which is ten years more than our rules require that such records be kept by registrants.

I would also point out that the Real-Time Reporting Rule provides that a party to a publicly-reportable swap transaction satisfies its real-time reporting requirements by executing the swap on or pursuant to the rules of an exchange or swap execution facility.[221] That is, SDs and MSPs, among others, may rely on exchanges and swap execution facilities to report all on-exchange trades; there is no mandated separate reporting requirement. However, the Internal Business Conduct Rules undermine this relief by requiring redundant recordkeeping and by mandating that SDs and MSPs save all transaction records and by failing to trust our own regulatory-creation to actually serve as a repository for all trade data as envisioned by Dodd-Frank Act. I have serious concerns about the Commission's ability to monitor and reconcile two sets of records, which is the rationale put forth in this final rule.

Ironically, the SDRs were created in the Dodd-Frank Act to facilitate market transparency and reporting. The Commission could provide greater transparency into its own cost-benefit analysis by disclosing its assumptions and data to support its conclusions. OMB Circular A–4 outlines standards for transparency with the following direction, ''A good analysis should be transparent and your results must be reproducible. You should clearly set out the basic assumptions, methods and data underlying the analysis and discuss the uncertainties associated with your estimates.'' [222] It goes on to recommend that, ''To provide greater access to your analysis, you should generally post it, with all the supporting documents, on the internet so the public can review the findings.'' [223] I presume the Commission feels that this level of compliance is not appropriate, given that the commenters failed to demand it, and is simply not reasonably feasible.

One of my major criticisms is that the Internal Business Conduct Rules, and, in particular, section 23.600—Risk Management Program for Swap Dealers and Major Swap Participants, attempt to cover every possible contingency instead of articulating goals and performance objectives. Section 4s(j)(2) simply requires that the SD or MSP ''establish robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant.'' Could anyone truly argue that that provision could not stand largely on its own as a performance objective? Did the Commission need to specify to the nth degree the behavior and manner of compliance that SDs and MSPs must adopt in order to meet that objective? And in doing so, has the Commission created loopholes and unintentional safe harbors for those who meet the regulatory requirements, but still manage to violate other provisions of the Commodity Exchange Act and regulations?

Another concern is that the Internal Business Conduct Rules do not provide for substituted compliance with any of these requirements for SDs and MSPs for which the CFTC is not their prudential regulator. While one distinct part of the preamble regarding rules pertaining to business continuity and disaster recovery suggest that if an SD or MSP is subject to other rules that meet the requirements of the Commission's rule, then such SD or MSP would be in compliance with the Commission's rule, the rules themselves do not evidence any attempts to coordinate our regulatory requirements with those of our fellow prudential regulators through the explicit provision for substituted compliance. More egregiously, section 23.603(h)—Business Continuity and Disaster Recovery Plans Required by Other Regulatory Authorities, specifically requires SDs and MSPs to comply with the business continuity and disaster recovery requirements of this regulation ''in addition to any business continuity and disaster recovery requirements that are imposed on the swap dealer or major swap participant by its prudential regulator or any other regulatory or self-regulatory authority.'' [224] There is no quantification or qualification of costs and benefits of this regulatory decision, and I am not surprised.

I believe our reasonably ''feasible standard'' as articulated in our own Staff Guidance has caused us to miss any marker for identifying and using the best, most innovative and least burdensome tools to meet the regulatory ends laid out in section 4s of the Commodity Exchange Act. We

[217] *See* Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer, Final Rule, at Section IV of the Preamble.

[218] *Id.*

[219] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54,538 (Sept. 1, 2011) (to be codified at 17 CFR partart 49).

[220] Real-Time Public Reporting of Swap Transaction Data, 76 FR 1,182 (Jan. 9, 2012) (to be codified at 17 CFR part 43); Swap Data Recordkeeping and Reporting Requirements, 76 FR 2,136 (Jan. 13, 2012) (to be codified at 17 CFR partpart 45).

[221] Real-Time Public Reporting of Swap Transaction Data, 76 FR 1,182, 1,244 (Jan. 9, 2012) (to be codified at 17 CFR part 43).

[222] OMB Circular A–4 at 17.

[223] *Id.*

[224] Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer, Final Rule, at § 23.603(h).

should be held accountable for not only failing to even attempt to meet the goals set by the President, but for deliberately eschewing them. I agree with Chairman Albrecht that the CFTC ought to be required to undertake more rigorous cost-benefit analyses. I believe all of our analyses should be more rigorous. While it may not solve all of our problems with putting out complex and inefficient regulations, as noted by Chairman Albrecht, it should help.[225] I will be sending a letter to Acting OMB Director Jeffrey Zients requesting his assistance in determining just how far off the baseline the Commission has fallen. If OMB Circular A–4 means anything at all, then OMB should take action and hold the Commission to the Circular's standards.

Appendix 4—Statement of Chairman Gensler and Commissioners Chilton and Wetjen

The Commission fully considered all comments and the costs and benefits of its actions in this rulemaking. The preamble of this **Federal Register** release specifically addresses issues concerning compliance burdens and recordkeeping requirements. Indeed, the preamble addresses the comments received in response to, and proffers the Commission's rationale for, each of the final rules promulgated herein. The final rules also contain numerous examples in which the recommendations of commenters have been adopted and incorporated into the final rule text. Further, all comments relevant to the Commission's consideration of costs and benefits were expressly addressed in the Commission's discussion of its cost-benefit considerations.

With respect to comments received in response to the recordkeeping rules, for example, the Commission is aware that the technology exists to implement a recording system as required under section 4s(g) of the Commodity Exchange Act (CEA). Indeed, other regulatory regimes across the globe already require such recording. As explained in the preamble to the proposed recordkeeping rules, in 2008, the United Kingdom's Financial Services Authority (FSA) implemented rules relating to the recording and retention of voice conversations and electronic communications, including a recent determination that all financial service firms will be required to record any relevant communication by employees on their work cell phones.[226] The FSA implemented this requirement based on significant technological advancements in recent years, particularly with respect to the cost of capturing and retaining copies of electronic material, including telephone communications, which have made recordkeeping requirements for digital and electronic communications more economically feasible and systemically prudent. Similar rules mandating the recording of certain voice and/or telephone conversations have been promulgated by the Hong Kong Securities and Futures Commission and by the Autorité des Marchés Financiers in France, and have been recommended by the International Organization of Securities Commissions (IOSCO).[227] Moreover, as noted on the Commission's Web site, Commission staff met with two firms that provide elements of the technology needed for compliance with the recording rules under section 4s(g). These meetings, as well as the international requirements, informed the Commission's response to comments received.

In addition, one commenter asked that swap dealers (SDs) and major swap participants (MSPs) be permitted to rely upon swap data repositories (SDRs) to retain records beyond the time periods that registrants currently retain such records. In concluding that SDs and MSPs must retain their own records as well as submit a certain subset of data to SDRs, the Commission did not call into question the integrity of its final swap data reporting rules or SDRs themselves; rather, the Commission determined that the retention of such records by SDs and MSPs is necessary for purposes of risk management and monitoring the entity's trading activities for unlawful conduct, among other things. Certain trade execution information that is critical for risk management and monitoring purposes, such as reconciliations to the general ledger, will not be retained at SDRs.

With regard to cost-benefit considerations of these elements of the recordkeeping rules, as well as for all of the final rules, the Commission strove to limit the burden on SDs and MSPs to the extent reasonably possible. For instance, as originally proposed, the recording requirement (discussed above) included a provision that would have required each transaction record to be maintained as a separate electronic file. The Commission dropped this requirement and clarified that the rule permits the data to be stored in databases that do not need to be tagged with transaction and counterparty identifiers so long as the SD or MSP can readily access and identify records by running a search on the data. By making this change, the Commission responded to comments and limited the rule's requirements to those dictated by statute,[228] reducing the burden to the extent reasonably possible.

Additionally, during the February 23, 2011 public meeting at which the Commission adopted these final rules, there was discussion of a concern relating to the technological and economic feasibility of the recordkeeping requirements. Responding to the concern, the Commission adopted 5 CFR 23.206, which delegates to the Director of the Division of Swap Dealer and Intermediary Oversight ''the authority to establish an alternative compliance schedule for requirements of § 23.202 that are found to be technologically or economically impracticable for an affected swap dealer or major swap participant that seeks, in good faith, to comply with the requirements of § 23.202 within a reasonable time period beyond the date on which compliance by such swap dealer or major swap participant is otherwise required.''

In sum, in this rulemaking the Commission has adequately addressed comments and considered the costs and benefits of its actions as required by section 15(a) of the CEA.

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[225] Albrecht, *supra,* at 10.

[226] 75 FR 76666, 76668–69 (Dec. 9, 2010) (Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants) (citing Financial Services Authority, ''Policy Statement: Telephone Recording: Recording of voice conversations and electronic communications,'' (March 2008)).

[227] *Id.* at 76669 (citing Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission para. 3.9 (2010) (H.K.); General Regulation of the Autorité des Marchés Financiers art. 313–51 (2010) (Fr.); and Press Release, International Organization of Securities Commissions, ''IOSCO Publishes Recommendations to Enhance Commodity Futures Markets Oversight,'' (Mar. 5, 2009), *http://www.iosco.org/news/pdf/IOSCONEWS137.pdf*).

[228] *See, e.g.,* CEA § 4s(g)(3) (''Each registered swap dealer and major swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.'').

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Part III

Environmental Protection Agency

40 CFR Part 50

Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2007–1145; FRL–9654–4]

RIN 2060–AO72

Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule is being issued as required by a consent decree governing the schedule for completion of this review of the air quality criteria and the secondary national ambient air quality standards (NAAQS) for oxides of nitrogen and oxides of sulfur. Based on its review, the EPA is retaining the current nitrogen dioxide (NO_2) and sulfur dioxide (SO_2) secondary standards to address the direct effects on vegetation of exposure to gaseous oxides of nitrogen and sulfur and, for reasons described in detail in this final preamble, is not adding new standards at this time to address effects associated with the deposition of oxides of nitrogen and sulfur on sensitive aquatic and terrestrial ecosystems. In addition, in this rule the EPA describes a field pilot program being developed to enhance our understanding of the degree of protectiveness that would likely be afforded by a multi-pollutant standard to address deposition-related acidification of sensitive aquatic ecosystems.

DATES: This final rule is effective on June 4, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–1145. All documents in the docket are listed in the *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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mrs. Ginger Tennant, Office of Air Quality Planning and Standards (OAQPS), U.S. Environmental Protection Agency, Mail Code C504–06, Research Triangle Park, NC 27711; telephone: 919–541–4072; fax: 919–541–0237; email: *tennant.ginger@epa.gov.*

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I. Background

A. Legislative Requirements

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. Section 7408) directs the Administrator to identify and list certain air pollutants and then to issue air quality criteria for those pollutants. The Administrator is to list those air pollutants that in her ''judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;'' ''the presence of which in the ambient air results from numerous or diverse mobile or stationary sources;'' and ''for which * * * [the Administrator] plans to issue air quality criteria * * *'' Air quality criteria are intended to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *'' 42 U.S.C. Section 7408(b). Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' NAAQS for pollutants for which air quality criteria are issued. Section 109(b)(1) defines a primary standard as one ''the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.'' [1] A secondary standard, as defined in Section 109(b)(2), must ''specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.'' Welfare effects as defined in Section 302(h) (42 U.S.C. Section 7602(h)) include, but are not limited to, ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

In setting standards that are ''requisite'' to protect public health and welfare, as provided in Section 109(b), the EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. In so doing, the EPA may not consider the costs of implementing the standards. *See* generally, *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 465–472, 475–76 (2001). Likewise, ''[a]ttainability and technological feasibility are not relevant considerations in the promulgation of national ambient air quality standards'' (*American Petroleum Institute* v. *Costle,* 665 F. 2d at 1185). Section 109(d)(1) requires that ''not later than December 31, 1980, and at 5-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under Section 108 and the national ambient air quality standards * * * and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate * * *.'' Section 109(d)(2) requires that an independent scientific review committee ''shall complete a review of the criteria * * * and the national primary and secondary ambient air quality standards * * * and shall recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate * * *.'' Since the early 1980's, this independent review function has been performed by the Clean Air Scientific Advisory Committee (CASAC).

B. History of Reviews of NAAQS for Nitrogen Oxides and Sulfur Oxides

1. NAAQS for Oxides of Nitrogen

After reviewing the relevant science on the public health and welfare effects associated with oxides of nitrogen, the EPA promulgated identical primary and secondary NAAQS for NO_2 in April 1971. These standards were set at a level of 0.053 parts per million (ppm) as an annual average (36 FR 8186). In 1982, the EPA published Air Quality Criteria Document for Oxides of Nitrogen (U.S. EPA, 1982), which updated the scientific criteria upon which the initial standards were based. In February 1984, the EPA proposed to retain the standards set in 1971 (49 FR 6866). After taking into account public comments, the EPA published the final decision to retain these standards in June 1985 (50 FR 25532).

The EPA began the most recent previous review of the oxides of nitrogen secondary standards in 1987. In November 1991, the EPA released an updated draft air quality criteria document (AQCD) for CASAC and public review and comment (56 FR 59285), which provided a comprehensive assessment of the available scientific and technical information on health and welfare effects associated with NO_2 and other oxides of nitrogen. The CASAC reviewed the draft document at a meeting held on July 1, 1993, and concluded in a closure letter to the Administrator that the document ''provides a scientifically balanced and defensible summary of current knowledge of the effects of this pollutant and provides an adequate basis for the EPA to make a decision as to the appropriate NAAQS for NO_2'' (Wolff, 1993). The AQCD for Oxides of Nitrogen was then finalized (U.S. EPA, 1995a). The EPA also prepared a Staff Paper that summarized and integrated the key studies and scientific evidence contained in the revised AQCD for oxides of nitrogen and identified the critical elements to be considered in the review of the NO_2 NAAQS. The CASAC reviewed two drafts of the Staff Paper and concluded in a closure letter to the Administrator that the document provided a ''scientifically adequate basis for regulatory decisions on nitrogen dioxide'' (Wolff, 1995).

In October 1995, the Administrator announced her proposed decision not to revise either the primary or secondary NAAQS for NO_2 (60 FR 52874; October 11, 1995). A year later, the Administrator made a final determination not to revise the NAAQS for NO_2 after careful evaluation of the comments received on the proposal (61 FR 52852; October 8, 1996). While the primary NO_2 standard was revised in January 2010, by supplementing the existing annual standard with the establishment of a new 1-hour standard, set at a level of 100 parts per billion (ppb) (75 FR 6474), the secondary NAAQS for NO_2 remains 0.053 ppm (100 micrograms per cubic meter [μg/m3] of air), annual arithmetic average, calculated as the arithmetic mean of the 1-hour NO_2 concentrations.

2. NAAQS for Oxides of Sulfur

The EPA promulgated primary and secondary NAAQS for SO_2 in April 1971 (36 FR 8186). The secondary standards included a standard set at 0.02 ppm, annual arithmetic mean, and a 3-hour average standard set at 0.5 ppm, not to be exceeded more than once per year. These secondary standards were established solely on the basis of evidence of adverse effects on vegetation. In 1973, revisions made to Chapter 5 (''Effects of Sulfur Oxide in the Atmosphere on Vegetation'') of the AQCD for Sulfur Oxides (U.S. EPA, 1973) indicated that it could not

[1] The legislative history of Section 109 of the CAA indicates that a primary standard is to be set at ''the maximum permissible ambient air level * * * which will protect the health of any [sensitive] group of the population,'' and that for this purpose ''reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group'' S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970).

properly be concluded that the vegetation injury reported resulted from the average SO_2 exposure over the growing season, rather than from short-term peak concentrations. Therefore, the EPA proposed (38 FR 11355) and then finalized (38 FR 25678) a revocation of the annual mean secondary standard. At that time, the EPA was aware that then-current concentrations of oxides of sulfur in the ambient air had other public welfare effects, including effects on materials, visibility, soils, and water. However, the available data were considered insufficient to establish a quantitative relationship between specific ambient concentrations of oxides of sulfur and such public welfare effects (38 FR 25679).

In 1979, the EPA announced that it was revising the AQCD for oxides of sulfur concurrently with that for particulate matter (PM) and would produce a combined PM and oxides of sulfur criteria document. Following its review of a draft revised criteria document in August 1980, CASAC concluded that acid deposition was a topic of extreme scientific complexity because of the difficulty in establishing firm quantitative relationships among (1) Emissions of relevant pollutants (e.g., SO_2 and oxides of nitrogen), (2) formation of acidic wet and dry deposition products, and (3) effects on terrestrial and aquatic ecosystems. The CASAC also noted that acid deposition involves, at a minimum, several different criteria pollutants: oxides of sulfur, oxides of nitrogen, and the fine particulate fraction of suspended particles. The CASAC felt that any document on this subject should address both wet and dry deposition, since dry deposition was believed to account for a substantial portion of the total acid deposition problem.

For these reasons, CASAC recommended that a separate, comprehensive document on acid deposition be prepared prior to any consideration of using the NAAQS as a regulatory mechanism for the control of acid deposition. The CASAC also suggested that a discussion of acid deposition be included in the AQCDs for oxides of nitrogen and PM and oxides of sulfur. Following CASAC closure on the AQCD for oxides of sulfur in December 1981, the EPA published a Staff Paper in November 1982, although the paper did not directly assess the issue of acid deposition. Instead, the EPA subsequently prepared the following documents to address acid deposition: The Acidic Deposition Phenomenon and Its Effects: Critical Assessment Review Papers, Volumes I and II (U.S. EPA, 1984a, b) and The Acidic Deposition Phenomenon and Its Effects: Critical Assessment Document (U.S. EPA, 1985) (53 FR 14935–14936). These documents, though they were not considered criteria documents and did not undergo CASAC review, represented the most comprehensive summary of scientific information relevant to acid deposition completed by the EPA at that point.

In April 1988 (53 FR 14926), the EPA proposed not to revise the existing primary and secondary standards for SO_2. This proposed decision with regard to the secondary SO_2 NAAQS was due to the Administrator's conclusions that: (1) Based upon the then-current scientific understanding of the acid deposition problem, it would be premature and unwise to prescribe any regulatory control program at that time; and (2) when the fundamental scientific uncertainties had been decreased through ongoing research efforts, the EPA would draft and support an appropriate set of control measures. Although the EPA revised the primary SO_2 standard in June 2010 by establishing a new 1-hour standard at a level of 75 ppb and revoking the existing 24-hour and annual standards (75 FR 35520), no further decision on the secondary SO_2 standard has been published.

C. History of Related Assessments and Agency Actions

In 1980, the Congress created the National Acid Precipitation Assessment Program (NAPAP) in response to growing concern about acidic deposition. The NAPAP was given a broad 10-year mandate to examine the causes and effects of acidic deposition and to explore alternative control options to alleviate acidic deposition and its effects. During the course of the program, the NAPAP issued a series of publicly available interim reports prior to the completion of a final report in 1990 (NAPAP, 1990).

In spite of the complexities and significant remaining uncertainties associated with the acid deposition problem, it soon became clear that a program to address acid deposition was needed. The CAA Amendments of 1990 included numerous separate provisions related to the acid deposition problem. The primary and most important of the provisions, the amendments to Title IV of the Act, established the Acid Rain Program to reduce emissions of SO_2 by 10 million tons and emissions of nitrogen oxides by 2 million tons from 1980 emission levels in order to achieve reductions over broad geographic regions. In this provision, Congress included a statement of findings that led them to take action, concluding that (1) The presence of acid compounds and their precursors in the atmosphere and in deposition from the atmosphere represents a threat to natural resources, ecosystems, materials, visibility, and public health; (2) the problem of acid deposition is of national and international significance; and (3) current and future generations of Americans will be adversely affected by delaying measures to remedy the problem.

Second, Congress authorized the continuation of the NAPAP in order to assure that the research and monitoring efforts already undertaken would continue to be coordinated and would provide the basis for an impartial assessment of the effectiveness of the Title IV program.

Third, Congress considered that further action might be necessary in the long-term to address any problems remaining after implementation of the Title IV program and, reserving judgment on the form that action could take, included Section 404 of the 1990 Amendments (CAA Amendments of 1990, Pub. L. 101–549, Section 404) requiring the EPA to conduct a study on the feasibility and effectiveness of an acid deposition standard or standards to protect ''sensitive and critically sensitive aquatic and terrestrial resources.'' At the conclusion of the study, the EPA was to submit a report to Congress. Five years later, the EPA submitted its report, entitled Acid Deposition Standard Feasibility Study: Report to Congress (U.S. EPA, 1995b) in fulfillment of this requirement. That report concluded that establishing acid deposition standards for sulfur and nitrogen deposition may at some point in the future be technically feasible, although appropriate deposition loads for these acidifying chemicals could not be defined with reasonable certainty at that time.

Fourth, the 1990 Amendments also added new language to sections of the CAA pertaining to the scope and application of the secondary NAAQS designed to protect the public welfare. Specifically, the definition of ''effects on welfare'' in Section 302(h) was expanded to state that the welfare effects include effects ''* * * whether caused by transformation, conversion, or combination with other air pollutants.''

In 1999, seven Northeastern states cited this amended language in Section 302(h) in a petition asking the EPA to use its authority under the NAAQS program to promulgate secondary NAAQS for the criteria pollutants

associated with the formation of acid rain. The petition stated that this language ''clearly references the transformation of pollutants resulting in the inevitable formation of sulfate and nitrate aerosols and/or their ultimate environmental impacts as wet and dry deposition, clearly signaling Congressional intent that the welfare damage occasioned by sulfur and nitrogen oxides be addressed through the secondary standard provisions of Section 109 of the Act.'' The petition further stated that ''recent federal studies, including the NAPAP Biennial Report to Congress: An Integrated Assessment, document the continued and increasing damage being inflicted by acid deposition to the lakes and forests of New York, New England and other parts of our nation, demonstrating that the Title IV program had proven insufficient.'' The petition also listed other adverse welfare effects associated with the transformation of these criteria pollutants, including impaired visibility, eutrophication of coastal estuaries, global warming, and tropospheric ozone and stratospheric ozone depletion.

In a related matter, the Office of the Secretary of the U.S. Department of Interior (DOI) requested in 2000, that the EPA initiate a rulemaking proceeding to enhance the air quality in national parks and wilderness areas in order to protect resources and values that are being adversely affected by air pollution. Included among the effects of concern identified in the request were the acidification of streams, surface waters, and/or soils; eutrophication of coastal waters; visibility impairment; and foliar injury from ozone.

In a **Federal Register** notice in 2001 (65 FR 48699), the EPA announced receipt of these requests and asked for comment on the issues raised in them. The EPA stated that it would consider any relevant comments and information submitted, along with the information provided by the petitioners and DOI, before making any decision concerning a response to these requests for rulemaking.

The 2005 NAPAP report states that ''* * * scientific studies indicate that the emission reductions achieved by Title IV are not sufficient to allow recovery of acid-sensitive ecosystems. Estimates from the literature of the scope of additional emission reductions that are necessary in order to protect acid-sensitive ecosystems range from approximately 40–80 percent beyond full implementation of Title IV * * *.'' The results of the modeling presented in this Report to Congress indicate that broader recovery is not predicted without additional emission reductions (NAPAP, 2005).

Given the state of the science as described in the Integrated Science Assessment (ISA), Risk and Exposure Assessment (REA), and in other recent reports, such as the NAPAP reports noted above, the EPA has decided, in the context of evaluating the adequacy of the current NO_2 and SO_2 secondary standards in this review, to revisit the question of the appropriateness of setting secondary NAAQS to address remaining known or anticipated adverse public welfare effects resulting from the acidic and nutrient deposition of these criteria pollutants.

D. History of the Current Review

The EPA initiated this current review in December 2005, with a call for information (70 FR 73236) for the development of a revised ISA. An Integrated Review Plan (IRP) was developed to provide the framework and schedule as well as the scope of the review and to identify policy-relevant questions to be addressed in the components of the review. The IRP was released in 2007 (U.S. EPA, 2007) for CASAC and public review. The EPA held a workshop in July 2007 on the ISA to obtain broad input from the relevant scientific communities. This workshop helped to inform the preparation of the first draft ISA, which was released for CASAC and public review in December 2007; a CASAC meeting was held on April 2–3, 2008, to review the first draft ISA. A second draft ISA was released for CASAC and public review in August 2008, and was discussed at a CASAC meeting held on October 1–2, 2008. The final ISA (U.S. EPA, 2008) was released in December 2008.

Based on the science presented in the ISA, the EPA developed the REA to further assess the national impact of the effects documented in the ISA. The Draft Scope and Methods Plan for Risk/Exposure Assessment: Secondary NAAQS Review for Oxides of Nitrogen and Oxides of Sulfur outlining the scope and design of the future REA was prepared for CASAC consultation and public review in March 2008. A first draft REA was presented to CASAC and the public for review in August 2008, and a second draft was presented for review in June 2009. The final REA (U.S. EPA, 2009) was released in September 2009. A first draft Policy Assessment (PA) was released in March 2010, and reviewed by CASAC on April 1–2, 2010. In a June 22, 2010, letter to the Administrator, CASAC provided advice and recommendations to the Agency concerning the first draft PA (Russell and Samet, 2010a). A second draft PA was released to CASAC and the public in September 2010, and reviewed by CASAC on October 6–7, 2010. The CASAC provided advice and recommendations to the Agency regarding the second draft PA in a December 9, 2010 letter (Russell and Samet 2010b). The CASAC and public comments on the second draft PA were considered by the EPA staff in developing a final PA (U.S. EPA, 2011). CASAC requested an additional meeting to provide additional advice to the Administrator based on the final PA on February 15–16, 2011. On January 14, 2011 the EPA released a version of the final PA prior to final document production, to provide sufficient time for CASAC review of the document in advance of this meeting. The final PA, incorporating final reference checks and document formatting, was released in February 2011. In a May 17, 2011, letter (Russell and Samet, 2011a), CASAC offered additional advice and recommendations to the Administrator with regard to the review of the secondary NAAQS for oxides of nitrogen and oxides of sulfur.

In 2005, the Center for Biological Diversity and four other plaintiffs filed a complaint alleging that the EPA had failed to complete the current review within the period provided by statute.[2] The schedule for completion of this review is governed by a consent decree resolving that lawsuit and the subsequent extension agreed to by the parties. The schedule presented in the original consent decree that governs this review, entered by the court on November 19, 2007, was revised on October 22, 2009 to allow for a 17-month extension of the schedule. The current decree provides that the EPA sign for publication notices of proposed and final rulemaking concerning its review of the oxides of nitrogen and oxides of sulfur NAAQS no later than July 12, 2011 and March 20, 2012, respectively.

This action presents the Administrator's final decisions on the review of the current secondary oxides of nitrogen and oxides of sulfur standards. Throughout this preamble a number of conclusions, findings, and determinations by the Administrator are noted.

E. Scope of the Current Review

1. Scope Presented in the Proposal

In conducting this periodic review of the secondary NAAQS for oxides of nitrogen and oxides of sulfur, as discussed in the IRP and REA, the EPA

[2] *Center for Biological Diversity, et al.* v. *Johnson,* No. 05–1814 (D.D.C.).

decided to assess the scientific information, associated risks, and standards relevant to protecting the public welfare from adverse effects associated jointly with oxides of nitrogen and sulfur. Although the EPA has historically adopted separate secondary standards for oxides of nitrogen and oxides of sulfur, the EPA is conducting a joint review of these standards because oxides of nitrogen and sulfur, and their associated transformation products are linked from an atmospheric chemistry perspective, as well as from an environmental effects perspective. The National Research Council (NRC) has recommended that the EPA consider multiple pollutants, as appropriate, in forming the scientific basis for the NAAQS (NRC, 2004). As discussed in the ISA and REA, there is a strong basis for considering these pollutants together, building upon the EPA's past recognition of the interactions of these pollutants and on the growing body of scientific information that is now available related to these interactions and associated ecological effects.

In defining the scope of this review, it must be considered that the EPA has set secondary standards for two other criteria pollutants related to oxides of nitrogen and sulfur: ozone (O_3) and PM. Oxides of nitrogen are precursors to the formation of ozone in the atmosphere, and under certain conditions, can combine with atmospheric ammonia to form ammonium nitrate, a component of fine PM. Oxides of sulfur are precursors to the formation of particulate sulfate, which is a significant component of fine PM in many parts of the United States. There are a number of welfare effects directly associated with ozone and fine PM, including ozone-related damage to vegetation and PM-related visibility impairment. Protection against those effects is provided by the ozone and fine PM secondary standards. This review focuses on evaluation of the protection provided by secondary standards for oxides of nitrogen and sulfur for two general types of effects: (1) direct effects on vegetation associated with exposure to gaseous oxides of nitrogen and sulfur in the ambient air, which are the effects that the current NO_2 and SO_2 secondary standards protect against; and (2) effects associated with the deposition of oxides of nitrogen and sulfur to sensitive aquatic and terrestrial ecosystems, including deposition in the form of particulate nitrate and particulate sulfate.

The ISA focuses on the ecological effects associated with deposition of ambient oxides of nitrogen and sulfur to natural sensitive ecosystems, as distinguished from commercially managed forests and agricultural lands. This focus reflects the fact that the majority of the scientific evidence regarding acidification and nutrient enrichment is based on studies in unmanaged ecosystems. Non-managed terrestrial ecosystems tend to have a higher fraction of nitrogen deposition resulting from atmospheric nitrogen (U.S. EPA, 2008, section 3.3.2.5). In addition, the ISA notes that agricultural and commercial forest lands are routinely fertilized with amounts of nitrogen that exceed air pollutant inputs even in the most polluted areas (U.S. EPA, 2008, section 3.3.9). This review recognizes that the effects of nitrogen deposition in managed areas are viewed differently from a public welfare perspective than are the effects of nitrogen deposition in natural, unmanaged ecosystems, largely due to the more homogeneous, controlled nature of species composition and development in managed ecosystems and the potential for benefits of increased productivity in those ecosystems.

In focusing on natural sensitive ecosystems, the PA primarily considers the effects of ambient oxides of nitrogen and sulfur via deposition on multiple ecological receptors. The ISA highlights effects including those associated with acidification and nitrogen nutrient enrichment. With a focus on these deposition-related effects the EPA's objective is to develop a framework for oxides of nitrogen and sulfur standards that incorporates ecologically relevant factors and that recognizes the interactions between the two pollutants as they deposit to sensitive ecosystems. The overarching policy objective is to develop a secondary standard(s) based on the ecological criteria described in the ISA and the results of the assessments in the REA, and consistent with the requirement of the CAA to set secondary standards that are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of these air pollutants in the ambient air. Consistent with the CAA, this policy objective includes consideration of ''variable factors * * * which of themselves or in combination with other factors may alter the effects on public welfare'' of the criteria air pollutants included in this review.

In addition, we have chosen to focus on the effects of ambient oxides of nitrogen and sulfur on ecological impacts on sensitive aquatic ecosystems associated with acidifying deposition of nitrogen and sulfur, which is a transformation product of ambient oxides of nitrogen and sulfur. Based on the information in the ISA, the assessments presented in the REA, and advice from CASAC on earlier drafts of this PA (Russell and Samet, 2010a, 2010b), and as discussed in detail in the PA, we have the greatest confidence in the causal linkages between oxides of nitrogen and sulfur and aquatic acidification effects relative to other deposition-related effects, including terrestrial acidification and aquatic and terrestrial nutrient enrichment.

2. Comments on the Scope of the Review

Comments received regarding the scope of the review were primarily those that questioned the EPA's legal authority under Section 109 of the CAA to set NAAQS that address deposition-related effects, focusing in particular on effects resulting from acidifying deposition to ecosystems.

While environmental organizations and some other commenters urged the EPA to establish a NAAQS that would protect against the impacts on sensitive ecosystems associated with the acidifying deposition of nitrogen and sulfur, several industry commenters argued that the enactment of Title IV of the CAA in 1990 displaced the EPA's authority to address acidification through the setting of NAAQS. These commenters contend that the existence of a specific regulatory program to address the acidification effects of oxides of nitrogen and sulfur supplants the EPA's general authority under the CAA. According to industry comments, this is demonstrated by a close reading of Section 404 which required the EPA to report to Congress on the feasibility of developing an acid deposition standard and the actions that would be required to integrate such a program into the CAA. The required study described in Section 404, commenters argue, demonstrates that Congress had concluded that the EPA lacked the authority under Section 109 of the CAA to establish a secondary NAAQS to address acid deposition.

Although the EPA is not adopting a secondary standard designed to protect the public welfare from the effects associated with the acidifying deposition of nitrogen and sulfur, the EPA does not agree that the enactment of Title IV displaced the EPA's authority under Section109 of the CAA to set such a NAAQS. We note that the purpose of Title IV ''is to reduce the adverse effects of acid deposition,'' CAA Section 401(b), while Section 109 directs the Administrator to go beyond this to set a standard that is ''requisite to protect public welfare from any known or

anticipated adverse effects,'' CAA Section 109(b)(2). These provisions are not accordingly in conflict, but represent the often typical interlinked approach of Congress to address the frequently complex problems of air pollution.

Nothing in the text or the legislative history of Title IV of the Act indicates a clear intention by Congress to foreclose the EPA's authority to address acid deposition through the NAAQS process. The requirement in Section 404 of the 1990 CAA Amendments that the EPA send to Congress ''a report on the feasibility and effectiveness of an acid deposition standard or standards'' does not indicate that Congress had concluded that an amendment to the CAA would be necessary to give the EPA the authority to issue regulations addressing acidification. The significance of the report required by Section 404 cannot be understood clearly in isolation, but should be considered in the overall context of the history of Congress' and the EPA's attempts to understand and to address the causes and effects of acid deposition and the EPA's conclusion in 1988 that the scientific uncertainties associated with acid deposition were too great to allow the Agency to establish a secondary NAAQS at that time. In the proposed rule, we noted that it was clear at the time of the 1990 CAA Amendments that a program to address acid deposition was needed and that the primary and most important of these provisions is Title IV of the Act, establishing the Acid Rain Program. In assessing the import of Section 404 in this overall context, the EPA has noted in the past and in section I.C above that ''Congress reserved judgment as to whether further action might be necessary or appropriate in the longer term'' to address any problems remaining after implementation of the Title IV program, and ''if so, what form it should take'' (58 FR 21351, 21356 (April 21, 1993)). Such reservation of judgment does not indicate that Congress viewed the EPA as lacking authority under Section 109 to establish a secondary NAAQS to address acid deposition but a recognition that the uncertainties associated with such a standard may be too significant to allow the Administrator to reach a reasoned conclusion as to the appropriate standard.

Having carefully considered the public comments, the EPA finds that the conclusions reached in the proposed rule with regard to the scope of the current review continue to be valid. The EPA concludes that the Agency has the authority under Section 109 of the CAA to consider deposition-related to ambient air concentrations of oxides of nitrogen and sulfur and the resulting effects on ecosystems and that the focus of the current review of the NAAQS for oxides of nitrogen and sulfur on aquatic acidification is appropriate. This issue is discussed in more detail in the EPA's Response to Comments document.

II. Rationale for Final Decisions on the Adequacy of the Current Secondary Standards

This section presents the rationale for the Administrator's final conclusions with regard to the adequacy of protection and ecological relevance of the current secondary standards for oxides of nitrogen and sulfur. As discussed more fully below, this rationale considered the latest scientific information on ecological effects associated with the presence of oxides of nitrogen and oxides of sulfur in the ambient air. This rationale also takes into account: (1) Staff assessments of the most policy-relevant information in the ISA and staff analyses of air quality, exposure, and ecological risks, presented more fully in the REA and in the PA, upon which staff conclusions on revisions to the secondary oxides of nitrogen and oxides of sulfur standards are based; (2) CASAC advice and recommendations, as reflected in discussions of drafts of the ISA, REA, and PA at public meetings, in separate written comments, and in CASAC's letters to the Administrator; and (3) public comments received during the development of these documents, either in connection with CASAC meetings or separately as well as comments received on the proposal notice.

In developing this rationale, the EPA has drawn upon an integrative synthesis of the entire body of evidence, published through early 2008, on ecological effects associated with the deposition of oxides of nitrogen and oxides of sulfur in the ambient air (U.S. EPA, 2008). As discussed below, this body of evidence addresses a broad range of ecological endpoints associated with ambient levels of oxides of nitrogen and oxides of sulfur. In considering this evidence, the EPA focuses on those ecological endpoints, such as aquatic acidification, for which the ISA judges associations with oxides of nitrogen and oxides of sulfur to be causal, likely causal, or for which the evidence is suggestive that oxides of nitrogen and/or sulfur contribute to the reported effects. The categories of causality determinations have been developed in the ISA (U.S. EPA, 2008) and are discussed in section 1.6 of the ISA.

Decisions on retaining or revising the current secondary standards for oxides of nitrogen and sulfur are largely public welfare policy judgments based on the Administrator's informed assessment of what constitutes requisite protection against adverse effects to public welfare. A public welfare policy decision should draw upon scientific information and analyses about welfare effects, exposure and risks, as well as judgments about the appropriate response to the range of uncertainties that are inherent in the scientific evidence and analyses. The ultimate determination as to what level of damage to ecosystems and the services provided by those ecosystems is adverse to public welfare is not wholly a scientific question, although it is informed by scientific studies linking ecosystem damage to losses in ecosystem services, and information on the value of those losses of ecosystem services. In reaching such decisions, the Administrator seeks to establish standards that are neither more nor less stringent than necessary for this purpose.

Drawing from information in sections II.A–C of the proposal, section II.A below provides overviews of the public welfare effects considered in this review, the risk and exposure assessments, and the adversity of effects on public welfare. Section II.B presents conclusions in the ISA, REA, and PA on the adequacy of the current secondary standards for oxides of nitrogen and oxides of sulfur. Consideration is given to the adequacy of protection afforded by the current standards for both direct and deposition-related effects, as well as to the appropriateness of the fundamental structure and the basic elements of the current standards for providing protection from deposition-related effects. The views of CASAC and a summary of the Administrator's proposed conclusions are also included. Section II. C presents a discussion of the comments received on the proposal with regard to the adequacy of the current standards. Section II. D presents the Administrator's final decisions with regard to the adequacy of the current standards for both direct and deposition-related effects on public welfare.

A. Introduction

A discussion of the effects associated with oxides of nitrogen and sulfur in the ambient air is presented below in section II.A.1. The discussion is organized around the types of effects being considered, including direct effects of gaseous oxides of nitrogen and sulfur, deposition-related effects related to acidification and nutrient

enrichment, and other effects such as materials damage, climate-related effects and mercury methylation.

Section II.A.2 presents a summary and discussion of the risk and exposure assessment performed for each of the four major effects categories. The REA uses case studies representing the broad geographic variability of the impacts from oxides of nitrogen and sulfur to conclude that there are ongoing adverse effects in many ecosystems from deposition of oxides of nitrogen and sulfur and that under current emissions scenarios these effects are likely to continue.

Section II.A.3 presents a discussion of adversity linking ecological effects to measures that can be used to characterize the extent to which such effects are reasonably considered to be adverse to public welfare. This involves consideration of how to characterize adversity from a public welfare perspective. In so doing, consideration is given to the concept of ecosystem services, the evidence of effects on ecosystem services, and how ecosystem services can be linked to ecological indicators.

1. Overview of Effects

This section discusses the known or anticipated ecological effects associated with oxides of nitrogen and sulfur, including the direct effects of gas-phase exposure to oxides of nitrogen and sulfur (section II.A.1.a) and effects associated with deposition-related exposure (section II.A.1.b). These sections also address questions about the nature and magnitude of ecosystem responses to reactive nitrogen and sulfur deposition, including responses related to acidification, nutrient depletion, and the mobilization of toxic metals in sensitive aquatic and terrestrial ecosystems. The uncertainties and limitations associated with the evidence of such effects are also discussed throughout this section.

a. Effects Associated With Gas-Phase Oxides of Nitrogen and Sulfur

Ecological effects on vegetation as discussed in earlier reviews as well as the ISA can be attributed to gas-phase oxides of nitrogen and sulfur. Acute and chronic exposures to gaseous pollutants such as SO_2, NO_2, nitric oxide (NO), nitric acid (HNO_3) and peroxyacetyl nitrite (PAN) are associated with negative impacts to vegetation. The current secondary NAAQS were set to protect against direct damage to vegetation by exposure to gas-phase oxides of nitrogen and sulfur, such as foliar injury, decreased photosynthesis, and decreased growth. The following summary is a concise overview of the known or anticipated effects to vegetation caused by gas phase nitrogen and sulfur. Most phototoxic effects associated with gas phase oxides of nitrogen and sulfur occur at levels well above ambient concentrations observed in the United States (U.S. EPA, 2008, section 3.4.2.4).

The 2008 ISA found that gas phase nitrogen and sulfur are associated with direct phytotoxic effects (U.S. EPA, 2008, section 4.4). The evidence is sufficient to infer a causal relationship between exposure to SO_2 and injury to vegetation (U.S. EPA, 2008, section 4.4.1 and 3.4.2.1). Acute foliar injury to vegetation from SO_2 may occur at levels above the current secondary standard (3-h average of 0.50 ppm). Effects on growth, reduced photosynthesis and decreased yield of vegetation are also associated with increased SO_2 exposure concentration and time of exposure.

The evidence is sufficient to infer a causal relationship between exposure to NO, NO_2 and PAN and injury to vegetation (U.S. EPA, 2008, section 4.4.2 and 3.4.2.2). At sufficient concentrations, NO, NO_2 and PAN can decrease photosynthesis and induce visible foliar injury to plants. Evidence is also sufficient to infer a causal relationship between exposure to HNO_3 and changes to vegetation (U.S. EPA, 2008, section 4.4.3 and 3.4.2.3). Phytotoxic effects of this pollutant include damage to the leaf cuticle in vascular plants and disappearance of some sensitive lichen species.

Vegetation in ecosystems near sources of gaseous oxides of nitrogen and sulfur or where SO_2, NO, NO_2, PAN and HNO_3 are most concentrated are more likely to be impacted by these pollutants. Uptake of these pollutants in a plant canopy is a complex process involving adsorption to surfaces (leaves, stems and soil) and absorption into leaves (U.S. EPA, 2008, section 3.4.2). The functional relationship between ambient concentrations of gas phase oxides of nitrogen and sulfur and specific plant response are impacted by internal factors such as rate of stomatal conductance and plant detoxification mechanisms, and external factors including plant water status, light, temperature, humidity, and pollutant exposure regime (U.S. EPA, 2008, section 3.4.2).

Entry of gases into a leaf is dependent upon physical and chemical processes of gas phase as well as to stomatal aperture. The aperture of the stomata is controlled largely by the prevailing environmental conditions, such as water availability, humidity, temperature, and light intensity. When the stomata are closed, resistance to gas uptake is high and the plant has a very low degree of susceptibility to injury. Mosses and lichens do not have a protective cuticle barrier to gaseous pollutants or stomata and are generally more sensitive to gaseous sulfur and nitrogen than vascular plants (U.S. EPA, 2008, section 3.4.2).

The appearance of foliar injury can vary significantly across species and growth conditions affecting stomatal conductance in vascular plants (U.S. EPA, 2009, section 6.4.1). For example, damage to lichens from SO_2 exposure includes decreased photosynthesis and respiration, damage to the algal component of the lichen, leakage of electrolytes, inhibition of nitrogen fixation, decreased potassium (K+) absorption, and structural changes.

The phytotoxic effects of gas phase oxides of nitrogen and sulfur are dependent on the exposure concentration and duration and species sensitivity to these pollutants. Effects to vegetation associated with oxides of nitrogen and sulfur are therefore variable across the United States and tend to be higher near sources of photochemical smog. For example, SO_2 is considered to be the primary factor contributing to the death of lichens in many urban and industrial areas.

The ISA states there is very limited new research on phytotoxic effects of NO, NO_2, PAN and HNO_3 at concentrations currently observed in the United States with the exception of some lichen species (U.S. EPA, 2008, section 4.4). Past and current HNO_3 concentrations may be contributing to the decline in lichen species in the Los Angeles basin. Most phytotoxic effects associated with gas phase oxides of nitrogen and sulfur occur at levels well above ambient concentrations observed in the United States (U.S. EPA, 2008, section 3.4.2.4).

b. Effects Associated With Deposition of Oxides of Nitrogen and Sulfur

Ecological effects associated with the deposition of oxides of nitrogen and oxides of sulfur can be divided into endpoints related to the type of ecosystem affected and the type of effect. As more fully discussed in section II.A of the proposal and chapter 3 of the PA, this section provides a brief summary of effects on ecosystems related to acidification, nutrient enrichment, and metal toxicity.

i. Acidification Effects on Aquatic and Terrestrial Ecosystems

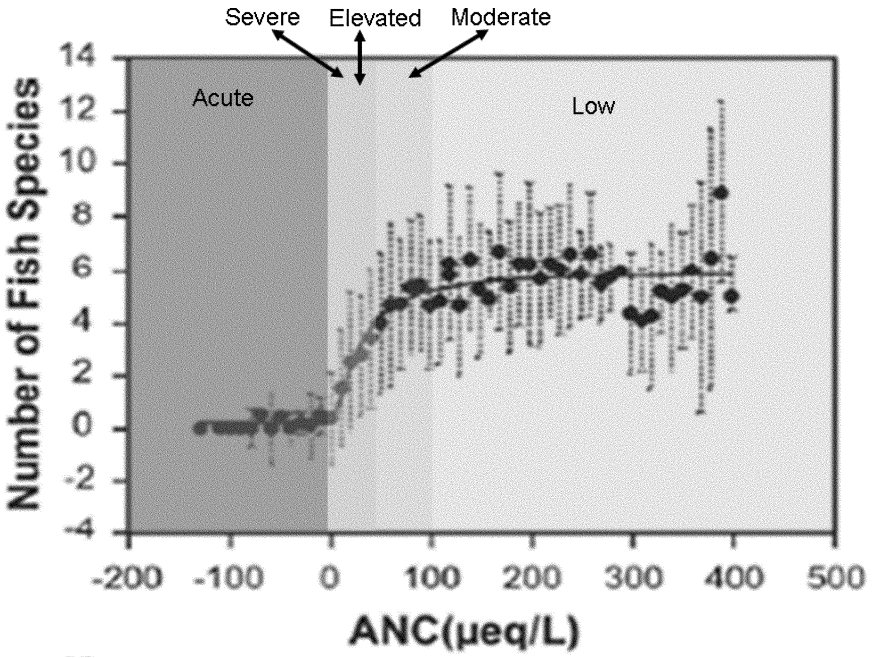
Sulfur oxides and nitrogen oxides in the atmosphere undergo a complex mix of reactions in gaseous, liquid, and solid

phases to form various acidic compounds. These acidic compounds are removed from the atmosphere through deposition: either wet (e.g., rain, snow), fog or cloud, or dry (e.g., gases, particles). Deposition of these acidic compounds to aquatic and terrestrial ecosystems can lead to effects on ecosystem structure and function. Following deposition, these compounds can, in some instances, unless retained by soil or biota, leach out of the soils in the form of sulfate (SO_4^{2-}) and nitrate (NO_3^-), leading to the acidification of surface waters. The effects on ecosystems depend on the magnitude and rate of deposition, as well as a host of biogeochemical processes occurring in the soils and water bodies (U.S. EPA, 2009, section 2.1). The chemical forms of nitrogen that may contribute to acidifying deposition include both oxidized and reduced chemical species, including reduced forms of nitrogen (NH_X).

The ISA concluded that deposition of oxides of nitrogen and sulfur and NH_X leads to the varying degrees of acidification of ecosystems (U.S. EPA, 2008). In the process of acidification, biogeochemical components of terrestrial and freshwater aquatic ecosystems are altered in a way that leads to effects on biological organisms. Deposition to terrestrial ecosystems often moves through the soil and eventually leaches into adjacent water bodies. Principal factors governing the sensitivity of terrestrial and aquatic ecosystems to acidification from sulfur and nitrogen deposition include geology, plant uptake of nitrogen, soil depth, and elevation. Geologic formations having low base cation supply generally underlie the watersheds of acid-sensitive lakes and streams. Other factors that contribute to the sensitivity of soils and surface waters to acidifying deposition include topography, soil chemistry, land use, and hydrologic flowpath. Chronic as well as episodic acidification tends to occur primarily at relatively high elevations in areas that have base-poor bedrock, high relief, and shallow soils.

With regard to aquatic acidification, the ISA concluded that the scientific evidence is sufficient to infer a causal relationship between acidifying deposition and effects on biogeochemistry and biota in aquatic ecosystems (U.S. EPA, 2008, section 4.2.2). The strongest evidence comes from studies of surface water chemistry in which acidic deposition is observed to alter sulfate and nitrate concentrations in surface waters, the sum of base cations, acid neutralizing capacity (ANC), dissolved inorganic aluminum (Al) and pH (U.S. EPA, 2008, section 3.2.3.2). The ANC is a key indicator of acidification with relevance to both terrestrial and aquatic ecosystems. The ANC is useful because it integrates the overall acid-base status of a lake or stream and reflects how aquatic ecosystems respond to acidic deposition over time. There is also a relationship between ANC and the surface water constituents that directly contribute to or ameliorate acidity-related stress, in particular, concentrations of hydrogen ion (as pH), calcium (Ca^{2+}) and Al. Moreover, low pH surface waters leach aluminum from soils, which is quite lethal to fish and other aquatic organisms. In aquatic systems, there is a direct relationship between ANC and fish and phyto-zooplankton diversity and abundance. Acidification in terrestrial ecosystems has been shown to cause decreased growth and increased susceptibility to disease and injury in sensitive tree species, including red spruce and sugar maple.

Based on analyses of surface water data from freshwater ecosystem surveys and monitoring, the most sensitive lakes and streams are contained in New England, the Adirondack Mountains, the Appalachian Mountains (northern Appalachian Plateau and Ridge/Blue Ridge region), the mountainous West, and the Upper Midwest. ANC is the most widely used indicator of acid sensitivity and has been found in various studies to be the best single indicator of the biological response and health of aquatic communities in acid sensitive systems. Annual or multi-year average ANC is a good overall indicator of sensitivity, capturing the ability of an ecosystem to withstand chronic acidification as well as episodic events such as spring melting that can lower ANC over shorter time spans. Biota are generally not harmed when annual average ANC levels are >100 microequivalents per liter (μeq/L). At annual average ANC levels between 100 and 50 μeq/L, the fitness of sensitive species (e.g., brook trout, zooplankton) begins to decline. When annual average ANC is <50 μeq/L, negative effects on aquatic biota are observed, including large reductions in diversity of fish species, and declines in health of fish populations, affecting reproductive ability and fitness. Annual average ANC levels below 0 μeq/L are generally associated with complete loss of fish species and other biota that are sensitive to acidification. An example of the relationship between ANC level and aquatic effects based on lakes in the Adirondacks is illustrated in the following figure:



Recent studies indicate that acidification of lakes and streams can result in significant loss in economic value, which is one indicator of adversity associated with loss of ecosystem services. A 2006 study of New York residents found that they are willing to pay between $300 and $800 million annually for the equivalent of improving lakes in the Adirondacks region to an ANC level of 50 μeq/L. Several states have set goals for improving the acid status of lakes and streams, generally targeting ANC in the range of 50 to 60 μeq/L, and have engaged in costly activities to decrease acidification.

With regard to terrestrial ecosystems, the evidence is sufficient to infer a causal relationship between acidifying deposition and changes in biogeochemistry (U.S. EPA, 2008, section 4.2.1.1). The strongest evidence comes from studies of forested ecosystems, with supportive information on other plant taxa, including shrubs and lichens (U.S. EPA, 2008, section 3.2.2.1.). Three useful indicators of chemical changes and acidification effects on terrestrial ecosystems, showing consistency among multiple studies are: soil base saturation, Al concentrations in soil water, and soil carbon to nitrogen (C:N) ratio (U.S. EPA, 2008, section 3.2.2.2).

Forests of the Adirondack Mountains of New York, Green Mountains of Vermont, White Mountains of New Hampshire, the Allegheny Plateau of Pennsylvania, and high-elevation forest ecosystems in the southern Appalachians and mountainous regions in the West are the regions most sensitive to acidifying deposition. The health of at least a portion of the sugar maple and red spruce growing in the United States may have been compromised by acidifying total nitrogen and sulfur deposition in recent years. Soil acidification caused by acidic deposition has been shown to cause decreased growth and increased susceptibility to disease and injury in sensitive tree species. Red spruce dieback or decline has been observed across high elevation areas in the Adirondack, Green and White mountains. The frequency of freezing injury to red spruce needles has increased over the past 40 years, a period that coincided with increased emissions of sulfur and nitrogen oxides and increased acidifying deposition. Acidifying deposition can contribute to dieback in sugar maple through depletion of cations from soil with low levels of available calcium. Grasslands are likely less sensitive to acidification than forests due to grassland soils being generally rich in base cations.

A commonly used indicator of terrestrial acidification is the base cation-to-aluminum ratio, Bc/Al. Many locations in sensitive areas of the United States have Bc/Al levels below benchmark levels we have classified as providing low to intermediate levels of protection to tree health. At a Bc/Al ratio of 1.2 (intermediate level of protection), red spruce growth can be reduced by 20 percent. At a Bc/Al ratio of 0.6 (low level of protection), sugar maple growth can be reduced by 20 percent. While not defining whether a 20 percent reduction in growth can be considered significant, existing economic studies suggest that avoiding significant declines in the health of spruce and sugar maple forests may be worth billions of dollars to residents of the Eastern United States.

ii. Nutrient Enrichment Effects in Terrestrial and Aquatic Ecosystems

The ISA found that deposition of nitrogen, including oxides of nitrogen and NH_X, leads to the nitrogen enrichment of terrestrial, freshwater and estuarine ecosystems (U.S. EPA 2008). In the process of nitrogen enrichment, biogeochemical components of terrestrial and freshwater aquatic ecosystems are altered in a way that leads to effects on biological organisms. Nitrogen deposition is a major source of anthropogenic nitrogen. For many terrestrial and freshwater ecosystems other sources of nitrogen including fertilizer and waste treatment are greater than deposition. Nitrogen deposition often contributes to nitrogen-enrichment effects in estuaries, but does not drive the effects since other sources of nitrogen greatly exceed nitrogen deposition. Both oxides of nitrogen and NH_X contribute to nitrogen deposition. For the most part, nitrogen effects on ecosystems do not depend on whether the nitrogen is in oxidized or reduced form. Thus, this summary focuses on the effects of nitrogen deposition in total.

The numerous ecosystem types that occur across the United States have a broad range of sensitivity to nitrogen deposition. Organisms in their natural

environment are commonly adapted to a specific regime of nutrient availability. Change in the availability of one important nutrient, such as nitrogen, may result in imbalances in ecosystems, with effects on ecosystem processes, structure and function. In certain nitrogen-limited ecosystems, including many ecosystems managed for commercial production, nitrogen deposition can result in beneficial increases in productivity. Nutrient enrichment effects from deposition of oxides of nitrogen are difficult to disentangle from overall effects of nitrogen enrichment. This is caused by two factors: the inputs of reduced nitrogen from deposition and, in estuarine ecosystems, a large fraction of nitrogen inputs from non-atmospheric sources.

The numerous ecosystem types that occur across the United States have a broad range of sensitivity to nitrogen deposition (U.S. EPA, 2008, Table 4–4). Increased deposition to nitrogen-limited ecosystems can lead to production increases that may be either beneficial or adverse depending on the system and management goals. Organisms in their natural environment are commonly adapted to a specific regime of nutrient availability. Change in the availability of one important nutrient, such as nitrogen, may result in an imbalance in ecological stoichiometry, with effects on ecosystem processes, structure and function.

With regard to terrestrial ecosystems, the ISA concluded that the evidence is sufficient to infer a causal relationship between nitrogen deposition and the alteration of biogeochemical cycling in terrestrial ecosystems (U.S. EPA, 2008, section 4.3.1.1 and 3.3.2.1). Due to the complexity of interactions between the nitrogen and carbon cycling, the effects of nitrogen on carbon budgets (quantified input and output of carbon to the ecosystem) are variable. Regional trends in net ecosystem productivity (NEP) of forests (not managed for silviculture) have been estimated through models based on gradient studies and meta-analysis. Atmospheric nitrogen deposition has been shown to cause increased litter accumulation and carbon storage in above-ground woody biomass. In the West, this has lead to increased susceptibility to more severe fires. Less is known regarding the effects of nitrogen deposition on carbon budgets of non-forest ecosystems. The ISA also concludes that the evidence is sufficient to infer a causal relationship between nitrogen deposition on the alteration of species richness, species composition and biodiversity in terrestrial ecosystems (U.S. EPA, 2008, section 4.3.1.2).

Little is known about the full extent and distribution of the terrestrial ecosystems in the United States that are most sensitive to impacts caused by nutrient enrichment from atmospheric nitrogen deposition. Effects are most likely to occur where areas of relatively high atmospheric N deposition intersect with nitrogen-limited plant communities. The alpine ecosystems of the Colorado Front Range, chaparral watersheds of the Sierra Nevada, lichen and vascular plant communities in the San Bernardino Mountains and the Pacific Northwest, and the southern California coastal sage scrub (CSS) community are among the most sensitive terrestrial ecosystems. There is growing evidence (U.S. EPA, 2008, section 4.3.1.2) that existing grassland ecosystems in the western United States are being altered by elevated levels of N inputs, including inputs from atmospheric deposition.

More is known about the sensitivity of particular plant communities. Based largely on results obtained in more extensive studies conducted in Europe, it is expected that the more sensitive terrestrial ecosystems include hardwood forests, alpine meadows, arid and semi-arid lands, and grassland ecosystems (U.S. EPA, 2008, section 3.3.5). The REA used published research results (U.S. EPA, 2009, section 5.3.1 and U.S. EPA, 2008, Table 4.4) to identify meaningful ecological benchmarks associated with different levels of atmospheric nitrogen deposition. These are illustrated in Figure 3–4 of the PA. The sensitive areas and ecological indicators identified by the ISA were analyzed further in the REA to create a national map that illustrates effects observed from ambient and experimental atmospheric nitrogen deposition loads in relation to Community Multi-scale Air Quality (CMAQ) 2002 modeling results and National Atmospheric Deposition Program (NADP) monitoring data. This map, reproduced in Figure 3–5 of the PA, depicts the sites where empirical effects of terrestrial nutrient enrichment have been observed and site proximity to elevated atmospheric nitrogen deposition.

With regard to freshwater ecosystems, the ISA concluded that the evidence is sufficient to infer a causal relationship between nitrogen deposition and the alteration of biogeochemical cycling in freshwater aquatic ecosystems (U.S. EPA, 2008, section 3.3.2.3). Nitrogen deposition is the main source of nitrogen enrichment to headwater streams, lower order streams and high elevation lakes. The ISA also concludes that the evidence is sufficient to infer a causal relationship between nitrogen deposition and the alteration of species richness, species composition and biodiversity in freshwater aquatic ecosystems (U.S. EPA, 2008, section 3.3.5.3).

There are many examples of fresh waters that are nitrogen-limited or nitrogen and phosphorous (P) co-limited (U.S. EPA, 2008, section 3.3.3.2). Less is known about the extent and distribution of the terrestrial ecosystems in the United States that are most sensitive to the effects of nutrient enrichment from atmospheric nitrogen deposition compared to acidification. Grasslands in the western United States are typically nitrogen-limited ecosystems dominated by a diverse mix of perennial forbs and grass species. A meta-analysis discussed in the ISA (U.S. EPA, 2008, section 3.3.3), indicated that nitrogen fertilization increased aboveground growth in all non-forest ecosystems except for deserts. Because the productivity of estuarine and near shore marine ecosystems is generally limited by the availability of nitrogen, they are also susceptible to the eutrophication effect of nitrogen deposition (U.S. EPA, 2008, section 4.3.4.1).

The magnitude of ecosystem response to nutrient enrichment may be thought of on two time scales, current conditions and how ecosystems have been altered since the onset of anthropogenic nitrogen deposition. As noted previously, studies found that nitrogen-limitation occurs as frequently as phosphorous-limitation in freshwater ecosystems (U.S. EPA, 2008, section 3.3.3.2). Recently, a comprehensive study of available data from the northern hemisphere surveys of lakes along gradients of nitrogen deposition show increased inorganic nitrogen concentration and productivity to be correlated with atmospheric nitrogen deposition. The results are unequivocal evidence of nitrogen limitation in lakes with low ambient inputs of nitrogen, and increased nitrogen concentrations in lakes receiving nitrogen solely from atmospheric nitrogen deposition. It has been suggested that most lakes in the northern hemisphere may have originally been nitrogen-limited, and that atmospheric nitrogen deposition has changed the balance of nitrogen and phosphorous in lakes.

Eutrophication effects from nitrogen deposition are most likely to be manifested in undisturbed, low nutrient surface waters such as those found in the higher elevation areas of the western United States. The most severe eutrophication from nitrogen deposition effects is expected downwind of major

urban and agricultural centers. High concentrations of lake or streamwater NO_3^-, indicative of ecosystem saturation, have been found at a variety of locations throughout the United States, including the San Bernardino and San Gabriel Mountains within the Los Angeles Air Basin, the Front Range of Colorado, the Allegheny mountains of West Virginia, the Catskill Mountains of New York, the Adirondack Mountains of New York, and the Great Smoky Mountains in Tennessee (U.S. EPA, 2008, section 3.3.8).

With regard to estuaries, the ISA concludes that the evidence is sufficient to infer a causal relationship between nitrogen deposition and the biogeochemical cycling of nitrogen and carbon in estuaries (U.S. EPA, 2008, section 4.3.4.1 and 3.3.2.3). In general, estuaries tend to be nitrogen-limited, and many currently receive high levels of nitrogen input from human activities (U.S. EPA, 2009, section 5.1.1). It is unknown if atmospheric deposition alone is sufficient to cause eutrophication; however, the contribution of atmospheric nitrogen deposition to total nitrogen load is calculated for some estuaries and can be >40 percent (U.S. EPA, 2009, section 5.1.1). The evidence is also sufficient to infer a causal relationship between nitrogen deposition and the alteration of species richness, species composition and biodiversity in estuarine ecosystems (U.S. EPA, 2008, section 4.3.4.2 and 3.3.5.4). Atmospheric and non-atmospheric sources of nitrogen contribute to increased phytoplankton and algal productivity, leading to eutrophication. Shifts in community composition, reduced hypolimnetic dissolved oxygen (DO), decreases in biodiversity, and mortality of submerged aquatic vegetation are associated with increased N deposition in estuarine systems.

In contrast to terrestrial and freshwater systems, atmospheric nitrogen load to estuaries contributes to the total load but does not necessarily drive the effects since other combined sources of nitrogen often greatly exceed nitrogen deposition. In estuaries, nitrogen-loading from multiple anthropogenic and non-anthropogenic pathways leads to water quality deterioration, resulting in numerous effects including hypoxic zones, species mortality, changes in community composition and harmful algal blooms that are indicative of eutrophication.

A recent national assessment of eutrophic conditions in estuaries found that 65 percent of the assessed systems had moderate to high overall eutrophic conditions. Most eutrophic estuaries occurred in the mid-Atlantic region and the estuaries with the lowest degree of eutrophication were in the North Atlantic. Other regions had mixtures of low, moderate, and high degrees of eutrophication (U.S. EPA, 2008, section 4.3.4.3). The mid-Atlantic region is the most heavily impacted area in terms of moderate or high loss of submerged aquatic vegetation due to eutrophication (U.S. EPA, 2008, section 4.3.4.2). Submerged aquatic vegetation is important to the quality of estuarine ecosystem habitats because it provides habitat for a variety of aquatic organisms, absorbs excess nutrients, and traps sediments (U.S. EPA, 2008, section 4.3.4.2). It is partly because many estuaries and near-coastal marine waters are degraded by nutrient enrichment that they are highly sensitive to potential negative impacts from nitrogen addition from atmospheric deposition.

iii. Effects on Metal Toxicity

As discussed in the ISA (U.S. EPA, 2008, section 3.4.1 and 4.5), mercury is a highly neurotoxic contaminant that enters the food web as a methylated compound, methylmercury (MeHg). Mercury is principally methylated by sulfur-reducing bacteria and can be taken up by microorganisms, zooplankton and macroinvertebrates. The contaminant is concentrated in higher trophic levels, including fish eaten by humans. Experimental evidence has established that only inconsequential amounts of MeHg can be produced in the absence of sulfate. Once MeHg is present, other variables influence how much accumulates in fish, but elevated mercury levels in fish can only occur where substantial amounts of MeHg are present. Current evidence indicates that in watersheds where mercury is present, increased oxides of sulfur deposition very likely results in additional production of MeHg which leads to greater accumulation of MeHg concentrations in fish. With respect to sulfur deposition and mercury methylation, the final ISA determined that ''[t]he evidence is sufficient to infer a causal relationship between sulfur deposition and increased mercury methylation in wetlands and aquatic environments.''

The production of meaningful amounts of MeHg requires the presence of SO_4^{2-} and mercury, and where mercury is present, increased availability of SO_4^{2-} results in increased production of MeHg. There is increasing evidence on the relationship between sulfur deposition and increased methylation of mercury in aquatic environments; this effect occurs only where other factors are present at levels within a range to allow methylation. The production of MeHg requires the presence of SO_4^{2-} and mercury, but the amount of MeHg produced varies with oxygen content, temperature, pH, and supply of labile organic carbon (U.S. EPA, 2008, section 3.4). In watersheds where changes in sulfate deposition did not produce an effect, one or several of those interacting factors were not in the range required for meaningful methylation to occur (U.S. EPA, 2008, section 3.4). Watersheds with conditions known to be conducive to mercury methylation can be found in the northeastern United States and southeastern Canada.

While the ISA concluded that the evidence was sufficient to infer a causal relationship between sulfur deposition and increased MeHg production in wetlands and aquatic ecosystems, the REA concluded that there was insufficient evidence to quantify the relationship between sulfur deposition and MeHg production. Therefore, only a qualitative assessment was included in chapter 6 of the REA. As a result, the PA could not reach a conclusion as to the adequacy of the existing SO_2 standards in protecting against welfare effects associated with increased mercury methylation.

2. Overview of Risk and Exposure Assessment

The risk and exposure assessment conducted for the current review was developed to describe potential risk from current and future deposition of oxides of nitrogen and sulfur to sensitive ecosystems. The case study analyses in the REA show that there is confidence that known or anticipated adverse ecological effects are occurring under current ambient loadings of nitrogen and sulfur in sensitive ecosystems across the United States. An overview of the analytic approaches used in the REA, a summary of the key findings from the air quality analyses and acidification and nutrient enrichment case studies, and general conclusions regarding other welfare effects are presented below.

a. Approach to REA Analyses

The REA evaluates the relationships between atmospheric concentrations, deposition, biologically relevant exposures, targeted ecosystem effects, and ecosystem services. To evaluate the nature and magnitude of adverse effects associated with deposition, the REA also examines various ways to quantify the relationships between air quality indicators, deposition of biologically available forms of nitrogen and sulfur, ecologically relevant indicators relating

to deposition, exposure and effects on sensitive receptors, and related effects resulting in changes in ecosystem structure and services. The intent is to determine the exposure metrics that incorporate the temporal considerations (i.e., biologically relevant timescales), pathways, and ecologically relevant indicators necessary to determine the effects on these ecosystems. To the extent feasible, the REA evaluates the overall load to the system for nitrogen and sulfur, as well as the variability in ecosystem responses to these pollutants. It also evaluates the contributions of atmospherically deposited nitrogen and sulfur individually relative to the combined atmospheric loadings of both elements together. Since oxidized nitrogen is the listed criteria pollutant (currently measured by the ambient air quality indicator NO_2) for the atmospheric contribution to total nitrogen, the REA examines the contribution of nitrogen oxides to total reactive nitrogen in the atmosphere, relative to the contributions of reduced forms of nitrogen (e.g., ammonia, ammonium), to ultimately assess how a meaningful secondary NAAQS might be structured.

The REA focuses on ecosystem welfare effects that result from the deposition of total reactive nitrogen and sulfur. Because ecosystems are diverse in biota, climate, geochemistry, and hydrology, response to pollutant exposures can vary greatly between ecosystems. In addition, these diverse ecosystems are not distributed evenly across the United States. To target nitrogen and sulfur acidification and nitrogen and sulfur enrichment, the REA addresses four main targeted ecosystem effects on terrestrial and aquatic systems identified by the ISA (U.S. EPA, 2008): Aquatic acidification due to nitrogen and sulfur; terrestrial acidification due to nitrogen and sulfur; aquatic nutrient enrichment, including eutrophication; and terrestrial nutrient enrichment. In addition to these four targeted ecosystem effects, the REA also qualitatively addresses the influence of sulfur oxides deposition on MeHg production; nitrous oxide (N_2O) effects on climate; nitrogen effects on primary productivity and biogenic greenhouse gas (GHG) fluxes; and phytotoxic effects on plants.

Because the targeted ecosystem effects outlined above are not evenly distributed across the United States, the REA identified case studies for each targeted effects based on ecosystems identified as sensitive to nitrogen and/or sulfur deposition effects. Eight case study areas and two supplemental study areas (Rocky Mountain National Park and Little Rock Lake, Wisconsin) are summarized in the REA based on ecosystem characteristics, indicators, and ecosystem service information. Case studies selected for aquatic acidification effects were the Adirondack Mountains and Shenandoah National Park. Kane Experimental Forest in Pennsylvania and Hubbard Brook Experimental Forest in New Hampshire were selected as case studies for terrestrial acidification. Aquatic nutrient enrichment case study locations were selected in the Potomac River Basin upstream of Chesapeake Bay and the Neuse River Basin upstream of the Pamlico Sound in North Carolina. The CSS communities in southern California and the mixed conifer forest (MCF) communities in the San Bernardino and Sierra Nevada Mountains of California were selected as case studies for terrestrial nutrient enrichment. Two supplemental areas were also chosen, one in Rocky Mountain National Park for terrestrial nutrient enrichment and one in Little Rock Lake, Wisconsin for aquatic nutrient enrichment.

For aquatic and terrestrial acidification effects, a similar conceptual approach was used (critical loads) to evaluate the impacts of multiple pollutants on an ecological endpoint, whereas the approaches used for aquatic and terrestrial nutrient enrichment were fundamentally distinct. Although the ecological indicators for aquatic and terrestrial acidification (i.e., ANC and BC/Al) are very different, both ecological indicators are well-correlated with effects such as reduced biodiversity and growth. While aquatic acidification is clearly the targeted effect area with the highest level of confidence, the relationship between atmospheric deposition and an ecological indicator is also quite strong for terrestrial acidification. The main drawback with the understanding of terrestrial acidification is that the data are based on laboratory responses rather than field measurements. Other stressors that are present in the field but that are not present in the laboratory may confound this relationship.

For nutrient enrichment effects, the REA utilized different types of indicators for aquatic and terrestrial effects to assess both the likelihood of adverse effects to ecosystems and the relationship between adverse effects and atmospheric sources of oxides of nitrogen. The ecological indicator chosen for aquatic nutrient enrichment, the Assessment of Estuarine Trophic Status Eutrophication Index (ASSETS EI), seems to be inadequate to relate atmospheric deposition to the targeted ecological effect, likely due to the many other confounding factors. Further, there is far less confidence associated with the understanding of aquatic nutrient enrichment because of the large contributions from non-atmospheric sources of nitrogen and the influence of both oxidized and reduced forms of nitrogen, particularly in large watersheds and coastal areas. However, a strong relationship exists between atmospheric deposition of nitrogen and ecological effects in high alpine lakes in the Rocky Mountains because atmospheric deposition is the only source of nitrogen to these systems. There is also a strong weight-of-evidence regarding the relationships between ecological effects attributable to terrestrial nitrogen nutrient enrichment; however, ozone and climate change may be confounding factors. In addition, the response for other species or species in other regions of the United States has not been quantified.

b. Key Findings

In summary, based on case study analyses, the REA concludes that known or anticipated adverse ecological effects are occurring under current conditions and further concludes that these adverse effects continue into the future. Key findings from the air quality analyses, acidification and nutrient enrichment case studies, as well as general conclusions from evaluating additional welfare effects, are summarized below.

i. Air Quality Analyses

The air quality analyses in the REA encompass the current emissions sources of nitrogen and sulfur, as well as atmospheric concentrations, estimates of deposition of total nitrogen, policy-relevant background, and non-atmospheric loadings of nitrogen and sulfur to ecosystems, both nationwide and in the case study areas. Spatial fields of deposition were created using wet deposition measurements from the NADP National Trends Network and dry deposition predictions from the 2002 CMAQ model simulation. Some key conclusions from this analysis are:

(1) Total reactive nitrogen deposition and sulfur deposition are much greater in the East compared to most areas of the West.

(2) These regional differences in deposition correspond to the regional differences in oxides of nitrogen and SO_2 concentrations and emissions, which are also higher in the East. Oxides of nitrogen emissions are much greater and generally more widespread than ammonia (NH_3) emissions nationwide; high NH_3 emissions tend to be more local (e.g., eastern North Carolina) or sub-regional (e.g., the upper

Midwest and Plains states). The relative amounts of oxidized versus reduced nitrogen deposition are consistent with the relative amounts of oxides of nitrogen and NH_3 emissions. Oxidized nitrogen deposition exceeds reduced nitrogen deposition in most of the case study areas; the major exception being the Neuse River/Neuse River Estuary Case Study Area.

(3) Reduced nitrogen deposition exceeds oxidized nitrogen deposition in the vicinity of local sources of NH_3.

(4) There can be relatively large spatial variations in both total reactive nitrogen deposition and sulfur deposition within a case study area; this occurs particularly in those areas that contain or are near a high emissions source of oxides of nitrogen, NH_3 and/or SO_2.

(5) The seasonal patterns in deposition differ between the case study areas. For the case study areas in the East, the season with the greatest amounts of total reactive nitrogen deposition correspond to the season with the greatest amounts of sulfur deposition. Deposition peaks in spring in the Adirondack, Hubbard Brook Experimental Forest, and Kane Experimental Forest case study areas, and it peaks in summer in the Potomac River/Potomac Estuary, Shenandoah, and Neuse River/Neuse River Estuary case study areas. For the case study areas in the West, there is less consistency in the seasons with greatest total reactive nitrogen and sulfur deposition in a given area. In general, both nitrogen and/or sulfur deposition peaks in spring or summer. The exception to this is the Sierra Nevada Range portion of the MCF Case Study Area, in which sulfur deposition is greatest in winter.

ii. Aquatic Acidification Case Studies

The role of aquatic acidification in two eastern United States areas—northeastern New York's Adirondack area and the Shenandoah area in Virginia—was analyzed in the REA to assess surface water trends in SO_4^{2-} and NO_3^-concentrations and ANC levels and to affirm the understanding that reductions in deposition could influence the risk of acidification. Monitoring data from the EPA-administered Temporally Integrated Monitoring of Ecosystems/Long-Term Monitoring (TIME/LTM) programs and the Environmental Monitoring and Assessment Program (EMAP) were assessed for the years 1990 to 2006, and past, present and future water quality levels were estimated using both steady-state and dynamic biogeochemical models.

Although wet deposition rates for SO_2 and oxides of nitrogen in the Adirondack Case Study Area have reduced since the mid-1990s, current concentrations are still well above pre-acidification (1860) conditions. For a discussion of the uncertainties of pre-acidification, see U.S. EPA, 2011, Appendix F. The Model of Acidification of Groundwater in Catchments (MAGIC) modeling predicts NO_3^- and SO_4^{2-} are 17- and 5-fold higher today, respectively. The estimated average ANC for 44 lakes in the Adirondack Case Study Area is 62.1 μeq/L (±15.7 μeq/L); 78 percent of all monitored lakes in the Adirondack Case Study Area have a current risk of Elevated, Severe, or Acute. Of the 78 percent, 31 percent experience episodic acidification, and 18 percent are chronically acidic today.

(1) Based on the steady-state critical load model for the year 2002, 18 percent, 28 percent, 44 percent, and 58 percent of 169 modeled lakes received combined total sulfur and nitrogen deposition that exceeded critical loads corresponding to ANC limits of 0, 20, 50, and 100 μeq/L respectively.

(2) Based on a deposition scenario that maintains current emission levels to 2020 and 2050, the simulation forecast indicates no improvement in water quality in the Adirondack Case Study Area. The percentage of lakes within the Elevated to Acute Concern classes remains the same in 2020 and 2050.

(3) Since the mid-1990s, streams in the Shenandoah Case Study Area have shown slight declines in NO_3 and SO_4^{2-} concentrations in surface waters. The ANC levels increased from about 50 μeq/L in the early 1990s to >75 μeq/L until 2002, when ANC levels declined back to 1991–1992 levels. Current concentrations are still above pre-acidification (1860) conditions. The MAGIC modeling predicts surface water concentrations of NO_3 and SO_4^{2-} are 10- and 32-fold higher today, respectively. The estimated average ANC for 60 streams in the Shenandoah Case Study Area is 57.9 μeq/L (±4.5 μeq/L). Fifty-five percent of all monitored streams in the Shenandoah Case Study Area have a current risk of Elevated, Severe, or Acute. Of the 55 percent, 18 percent experience episodic acidification, and 18 percent are chronically acidic today.

(4) Based on the steady-state critical load model for the year 2002, 52 percent, 72 percent, 85 percent and 93 percent of 60 modeled streams received combined total sulfur and nitrogen deposition that exceeded critical loads corresponding to ANC limits of 0, 20, 50, and 100 μeq/L respectively.

(5) Based on a deposition scenario that maintains current emission levels to 2020 and 2050, the simulation forecast indicates that a large number of streams would still have Elevated to Acute problems with acidity.

iii. Terrestrial Acidification Case Studies

The role of terrestrial acidification was examined in the REA using a critical load analysis for sugar maple and red spruce forests in the eastern United States by using the BC/Al ratio in acidified forest soils as an indicator to assess the impact of nitrogen and sulfur deposition on tree health. These are the two most commonly studied species in North America for impacts of acidification. At a BC/Al ratio of 1.2, red spruce growth can be reduced by 20 percent. Sugar maple growth can be reduced by 20 percent at a BC/Al ratio of 0.6. Key findings of the case study are summarized below.

(1) Case study results suggest that the health of at least a portion of the sugar maple and red spruce growing in the United States may have been compromised with acidifying total nitrogen and sulfur deposition in 2002. The 2002 CMAQ/NADP total nitrogen and sulfur deposition levels exceeded three selected critical loads in 3 percent to 75 percent of all sugar maple plots across 24 states. The three critical loads ranged from 6,008 to 107 eq/ha/yr for the BC/Al ratios of 0.6, 1.2, and 10.0 (increasing levels of tree protection). The 2002 CMAQ/NADP total nitrogen and sulfur deposition levels exceeded three selected critical loads in 3 percent to 36 percent of all red spruce plots across eight states. The three critical loads ranged from 4,278 to 180 eq/ha/yr for the BC/Al ratios of 0.6, 1.2, and 10.0 (increasing levels of tree protection).

(2) The SMB model assumptions made for base cation weathering (Bcw) and forest soil ANC input parameters are the main sources of uncertainty since these parameters are rarely measured and require researchers to use default values.

(3) The pattern of case study results suggests that nitrogen and sulfur acidifying deposition in the sugar maple and red spruce forest areas studied were similar in magnitude to the critical loads for those areas and both ecosystems are likely to be sensitive to any future changes in the levels of deposition.

iv. Aquatic Nutrient Enrichment Case Studies

The role of nitrogen deposition in two main stem rivers feeding their respective estuaries was analyzed in the REA to determine if decreases in deposition could influence the risk of eutrophication as predicted using the ASSETS EI scoring system in tandem with SPARROW (SPAtially Referenced Regression on Watershed Attributes) modeling. This modeling approach provides a transferrable, intermediate-level analysis of the linkages between atmospheric deposition and receiving waters, while providing results on which conclusions could be drawn. A summary of findings follows:

(1) The 2002 CMAQ/NADP results showed that an estimated 40,770,000 kilograms (kg) of total nitrogen was deposited in the Potomac River watershed. The SPARROW modeling predicted that 7,380,000 kg N/yr of the deposited nitrogen reached the estuary (20 percent of the total load to the estuary). The overall ASSETS EI for the Potomac River and Potomac Estuary was Bad (based on all sources of N).

(2) To improve the Potomac River and Potomac Estuary ASSETS EI score from Bad to Poor, a decrease of at least 78 percent in the 2002 total nitrogen atmospheric deposition load to the watershed would be required.

(3) The 2002 CMAQ/NADP results showed that an estimated 18,340,000 kg of total nitrogen was deposited in the Neuse River watershed. The SPARROW modeling predicted that 1,150,000 kg N/yr of the deposited nitrogen reached the estuary (26 percent of the total load to the estuary). The overall ASSETS EI for the Neuse River/Neuse River Estuary was Bad.

(4) It was found that the Neuse River/Neuse River Estuary ASSETS EI score could not be improved from Bad to Poor with decreases only in the 2002 atmospheric deposition load to the watershed. Additional reductions would be required from other nitrogen sources within the watershed.

The small effect of decreasing atmospheric deposition in the Neuse River watershed is because the other nitrogen sources within the watershed are more influential than atmospheric deposition in affecting the total nitrogen loadings to the Neuse River Estuary, as estimated with the SPARROW model. A water body's response to nutrient loading depends on the magnitude (e.g., agricultural sources have a higher influence in the Neuse than in the Potomac), spatial distribution, and other characteristics of the sources within the watershed; therefore a reduction in nitrogen deposition does not always produce a linear response in reduced load to the estuary, as demonstrated by these two case studies.

v. Terrestrial Nutrient Enrichment Case Studies

California CSS and MCF communities were the focus of the Terrestrial Nutrient Enrichment Case Studies of the REA. Geographic information systems analysis supported a qualitative review of past field research to identify ecological benchmarks associated with CSS and mycorrhizal communities, as well as MCF's nutrient-sensitive acidophyte lichen communities, fine-root biomass in Ponderosa pine and leached nitrate in receiving waters. These benchmarks, ranging from 3.1 to 17 kg N/ha/yr, were compared to 2002 CMAQ/NADP data to discern any associations between atmospheric deposition and changing communities. Evidence supports the finding that nitrogen alters CSS and MCF. Key findings include the following:

(1) The 2002 CMAQ/NADP nitrogen deposition data show that the 3.3 kg N/ha/yr benchmark has been exceeded in more than 93 percent of CSS areas (654,048 ha). This suggests that such deposition is a driving force in the degradation of CSS communities. One potentially confounding factor is the role of fire. Although CSS decline has been observed in the absence of fire, the contributions of deposition and fire to the CSS decline require further research. The CSS is fragmented into many small parcels, and the 2002 CMAQ/NADP 12-km grid data are not fine enough to fully validate the relationship between CSS distribution, nitrogen deposition, and fire.

(2) The 2002 CMAQ/NADP nitrogen deposition data exceeds the 3.1 kg N/ha/yr benchmark in more than 38percent (1,099,133 ha) of MCF areas, and nitrate leaching has been observed in surface waters. Ozone effects confound nitrogen effects on MCF acidophyte lichen, and the interrelationship between fire and nitrogen cycling requires additional research.

c. Other Welfare Effects

Ecological effects have also been documented across the United States where elevated nitrogen deposition has been observed, including the eastern slope of the Rocky Mountains where shifts in dominant algal species in alpine lakes have occurred where wet nitrogen deposition was only about 1.5 kg N/ha/yr. High alpine terrestrial communities have a low capacity to sequester nitrogen deposition, and monitored deposition exceeding 3 to 4 kg N/ha/yr could lead to community-level changes in plant species, lichens and mycorrhizae.

Additional welfare effects are documented, but examined less extensively, in the REA. These effects include qualitative discussions related to visibility and materials damage, such as corrosion, erosion, and soiling of paint and buildings which are being addressed in the PM NAAQS review currently underway. A discussion of the causal relationship between sulfur deposition (as sulfate, SO_4^{2-}) and increased mercury methylation in wetlands and aquatic environments is also included in the REA. On this subject the REA concludes that decreases in SO_4^{2-} deposition will likely result in decreases in MeHg concentration; however, spatial and biogeochemical variations nationally hinder establishing large scale dose-response relationships.

Several additional issues concerning oxides of nitrogen were addressed in the REA. Consideration was also given to N_2O, a potent GHG. The REA concluded that it is most appropriate to analyze the role of N_2O in the context of all of the GHGs rather than as part of the REA for this review. The REA considered nitrogen deposition and its correlation with the rate of photosynthesis and net primary productivity. Nitrogen addition ranging from 15.4 to 300 kg N/ha/yr is documented as increasing wetland N_2O production by an average of 207 percent across all ecosystems. Nitrogen addition ranging from 30 to 240 kg N/ha/yr increased methane (CH_4) emissions by 115 percent, averaged across all ecosystems, and methane uptake was reduced by 38 percent averaged across all ecosystems when nitrogen addition ranged from 10 to 560 kg N/ha/yr, but reductions were only significant for coniferous and deciduous forests. The heterogeneity of ecosystems across the United States, however, introduces variations into dose-response relationships.

The phytotoxic effects of oxides of nitrogen and sulfur on vegetation were also briefly discussed in the REA which concluded that since a unique secondary NAAQS exists for SO_2, and concentrations of nitric oxide (NO), NO_2 and PAN are rarely high enough to have phytotoxic effects on vegetation, further assessment was not warranted at this time.

3. Overview of Adversity of Effects to Public Welfare

Characterizing a known or anticipated adverse effect to public welfare is an important component of developing any secondary NAAQS. According to the

CAA, welfare effects include: ''effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effect on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants'' (CAA, Section 302(h)). While the text above lists a number of welfare effects, these effects do not define public welfare in and of themselves.

Although there is no specific definition of adversity to public welfare, the paradigm of linking adversity to public welfare to disruptions in ecosystem structure and function has been used broadly by the EPA to categorize effects of pollutants from the cellular to the ecosystem level. An evaluation of adversity to public welfare might consider the likelihood, type, magnitude, and spatial scale of the effect as well as the potential for recovery and any uncertainties relating to these considerations.

Similar concepts were used in past reviews of secondary NAAQS for ozone and PM (relating to visibility), as well as in initial reviews of effects from lead deposition. Because oxides of nitrogen and sulfur are deposited from ambient sources into ecosystems where they affect changes to organisms, populations and ecosystems, the concept of adversity to public welfare as a result of alterations in structure and function of ecosystems is an appropriate consideration for this review.

Based on information provided in the PA, the following section discusses how ecological effects from deposition of oxides of nitrogen and sulfur relate to adversity to public welfare. In the PA, public welfare was discussed in terms of loss of ecosystem services (defined below), which in some cases can be monetized. Each of the four main effect areas (aquatic and terrestrial acidification and aquatic and terrestrial nutrient over-enrichment) are discussed including current ecological effects and associated ecosystem services.

a. Ecosystem Services

The PA defines ecosystem services as the benefits individuals and organizations obtain from ecosystems. Ecosystem services can be classified as provisioning (food and water), regulating (control of climate and disease), cultural (recreational, existence, spiritual, educational), and supporting (nutrient cycling). Conceptually, changes in ecosystem services may be used to aid in characterizing a known or anticipated adverse effect to public welfare. In the REA and PA ecosystem services are discussed as a method of assessing the magnitude and significance to the public of resources affected by ambient concentrations of oxides of nitrogen and sulfur and deposition in sensitive ecosystems.

The EPA has in previous NAAQS reviews defined ecological goods and services for the purposes of a Regulatory Impact Analysis (RIA) as the ''outputs of ecological functions or processes that directly or indirectly contribute to social welfare or have the potential to do so in the future. Some outputs may be bought and sold, but most are not marketed.'' It is especially important to acknowledge that it is difficult to measure and/or monetize the goods and services supplied by ecosystems. It can be informative in characterizing adversity to public welfare to attempt to place an economic valuation on the set of goods and services that have been identified with respect to a change in policy however it must be noted that this valuation will be incomplete and illustrative only.

Knowledge about the relationships linking ambient concentrations and ecosystem services is considered in the PA as one method by which to inform a policy judgment on a known or anticipated adverse public welfare effect. For example, a change in an ecosystem structure and process, such as foliar injury, would be classified as an ecological effect, with the associated changes in ecosystem services, such as primary productivity, food availability, forest products, and aesthetics (e.g., scenic viewing), classified as public welfare effects. Additionally, changes in biodiversity would be classified as an ecological effect, and the associated changes in ecosystem services—productivity, existence (nonuse) value, recreational viewing and aesthetics—would also be classified as public welfare effects.

As described in chapters 4 and 5 of the REA, case study analyses were performed that link deposition in sensitive ecosystems to changes in a given ecological indicator (e.g., for aquatic acidification, to changes in ANC) and then to changes in ecosystems. Appendix 8 of the REA links the changes in ecosystems to the services they provide (e.g., fish species richness and its influence on recreational fishing). To the extent possible for each targeted effect area, the REA linked ambient concentrations of nitrogen and sulfur (i.e., ambient air quality indicators) to deposition in sensitive ecosystems (i.e., exposure pathways), and then to system response as measured by a given ecological indicator (e.g., lake and stream acidification as measured by ANC). The ecological effect (e.g., changes in fish species richness) was then, where possible, associated with changes in ecosystem services and the corresponding public welfare effects (e.g., recreational fishing).

b. Effects on Ecosystem Services

The process used to link ecological indicators to ecosystem services is discussed extensively in appendix 8 of the REA. In brief, for each case study area assessed, the ecological indicators are linked to an ecological response that is subsequently linked to associated services to the extent possible. For example, in the case study for aquatic acidification the chosen ecological indicator is ANC which can be linked to the ecosystem service of recreational fishing. Although recreational fishing losses are the only service effects that can be independently quantified or monetized at this time, there are numerous other ecosystem services that may be related to the ecological effects of acidification.

While aquatic acidification is the focus of this proposed standard, the other effect areas were also analyzed in the REA and these ecosystems are being harmed by nitrogen and sulfur deposition and will obtain some measure of protection with any decrease in that deposition regardless of the reason for the decrease. The following summarizes the current levels of specific ecosystem services for aquatic and terrestrial acidification and aquatic and terrestrial nutrient over-enrichment and attempts to quantify and when possible monetize the harm to public welfare, as represented by ecosystem services, due to nitrogen and sulfur deposition.

i. Aquatic Acidification

Acidification of aquatic ecosystems primarily affects the ecosystem services that are derived from the fish and other aquatic life found in surface waters. In the northeastern United States, the surface waters affected by acidification are not a major source of commercially raised or caught fish; however, they are a source of food for some recreational and subsistence fishers and for other consumers. Although data and models are available for examining the effects on recreational fishing, relatively little data are available for measuring the effects on subsistence and other consumers. Inland waters also provide aesthetic and educational services along with non-use services, such as existence value (protection and preservation with

no expectation of direct use). In general, inland surface waters such as lakes, rivers, and streams also provide a number of regulating services, playing a role in hydrological regimes and climate regulation. There is little evidence that acidification of freshwaters in the northeastern United States has significantly degraded these specific services; however, freshwater ecosystems also provide biological control services by providing environments that sustain delicate aquatic food chains. The toxic effects of acidification on fish and other aquatic life impair these services by disrupting the trophic structure of surface waters. Although it is difficult to quantify these services and how they are affected by acidification, it is worth noting that some of these services may be captured through measures of provisioning and cultural services. For example, these biological control services may serve as ''intermediate'' inputs that support the production of ''final'' recreational fishing and other cultural services.

As summarized in Chapter 4 of the PA, recent studies indicate that acidification of lakes and streams can result in significant loss in economic value. Embedded in these numbers is a degree of harm to recreational fishing services due to acidification that has occurred over time. These harms have not been quantified on a regional scale; however, a case study was conducted in the Adirondacks area (U.S. EPA, 2011, section 4.4.2).

In the Adirondacks case study, estimates of changes in recreational fishing services were determined, as well as changes more broadly in ''cultural'' ecosystem services (including recreational, aesthetic, and nonuse services). First, the MAGIC model (U.S. EPA, 2009, Appendix 8 and section 2.2) was applied to 44 lakes to predict what ANC levels would be under both ''business as usual'' conditions (i.e., allowing for some decline in deposition due to existing regulations) and pre-emission (i.e., background) conditions. Second, to estimate the recreational fishing impacts of aquatic acidification in these lakes, an existing model of recreational fishing demand and site choice was applied. This model predicts how recreational fishing patterns in the Adirondacks would differ and how much higher the average annual value of recreational fishing services would be for New York residents if lake ANC levels corresponded to background (rather than business as usual) conditions. To estimate impacts on a broader category of cultural (and some provisioning) ecosystem services, results from the Banzhaf et al (2006) valuation survey of New York residents were adapted and applied to this context. The focus of the survey was on impacts on aquatic resources. Pretesting of the survey indicated that respondents nonetheless tended to assume that benefits would occur in the condition of birds and forests as well as in recreational fishing.

The REA estimated 44 percent of the Adirondack lakes currently fall below an ANC of 50 μeq/L. Several states have set goals for improving the acid status of lakes and streams, generally targeting ANC in the range of 50 to 60 μeq/L, and have engaged in costly activities to decrease acidification.

These results imply significant value to the public in addition to those derived from recreational fishing services. Note that the results are only applicable to improvements in the Adirondacks valued by residents of New York. If similar benefits exist in other acid-impacted areas, benefits for the nation as a whole could be substantial. The analysis provides results on only a subset of the impacts of acidification on ecosystem services and suggests that the overall impact on these services could be substantial.

ii. Terrestrial Acidification

Chapters 4.4.3 and 4.4.4 of the PA review several economic studies of areas sensitive to terrestrial acidification. Forests in the northeastern United States provide several important and valuable provisioning ecosystem services, which are reflected in the production and sales of tree products. Sugar maples are a particularly important commercial hardwood tree species in the United States, producing timber and maple syrup that provide hundreds of millions of dollars in economic value annually. Red spruce is also used in a variety of wood products and provides up to $100 million in economic value annually. Although the data do not exist to directly link acidification damages to economic values of lost recreational ecosystem services in forests, these resources are valuable to the public. The EPA is not able to quantify at this time the specific effects on these values of acid deposition, or of any specific reductions in deposition, relative to the effects of many other factors that may affect them.

iii. Nutrient Enrichment

Chapters 4.4.5 and 4.4.6 of the PA summarize economic studies of east coast estuaries affected by nutrient over-enrichment or eutrophication. Estuaries in the eastern United States are important for fish and shellfish production. The estuaries are capable of supporting large stocks of resident commercial species, and they serve as the breeding grounds and interim habitat for several migratory species. To provide an indication of the magnitude of provisioning services associated with coastal fisheries, from 2005 to 2007, the average value of total catch was $1.5 billion per year in 15 East Coast states. Estuaries also provide an important and substantial variety of cultural ecosystem services, including water-based recreational and aesthetic services. For example, data indicate that 4.8 percent of the population in coastal states from North Carolina to Massachusetts participated in saltwater fishing, with a total of 26 million saltwater fishing days in 2006. Recreational participation estimates for 1999–2000 showed almost 6 million individuals participated in motor boating in coastal states from North Carolina to Massachusetts. The EPA is not able to quantify at this time the specific effects on these values of nitrogen deposition, or of any specific reductions in deposition, relative to the effects of many other factors that may affect them.

Terrestrial ecosystems can also suffer from nutrient over-enrichment. Each ecosystem is different in its composition of species and nutrient requirements. Changes to individual ecosystems from changes in nitrogen deposition can be hard to assess economically. Relative recreational values are often determined by public use information. Chapter 4.4.7 of the PA reviewed studies related to park use in California. Data from California State Parks indicate that in 2002, 68.7 percent of surveyed individuals participated in trail hiking for an average of 24.1 days per year. The EPA is not able to quantify at this time the specific effects on these values of nitrogen deposition, or of any specific reductions in deposition, relative to the effects of many other factors that may affect them.

The PA also identified fire regulation as a service that could be affected by nutrient over-enrichment of the CSS and MCF ecosystems by encouraging growth of more flammable grasses, increasing fuel loads, and altering the fire cycle. Over the 5-year period from 2004 to 2008, Southern California experienced, on average, over 4,000 fires per year, burning, on average, over 400,000 acres per year. It is not possible at this time to quantify the contribution of nitrogen deposition, among many other factors, to increased fire risk.

c. Summary

Adversity to public welfare can be understood by looking at how deposition of oxides of nitrogen and

sulfur affect the ecological functions of an ecosystem (see II.A.), and then understanding the ecosystem services that are degraded. The monetized value of the ecosystem services provided by ecosystems that are sensitive to deposition of oxides of nitrogen and sulfur are in the billions of dollars each year, though it is not possible to quantify or monetize at this time the effects on these values of nitrogen and sulfur deposition or of any changes in deposition that may result from new secondary standards. Many lakes and streams are known to be degraded by acidic deposition which affects recreational fishing and tourism. Forest growth is likely suffering from acidic deposition in sensitive areas affecting red spruce and sugar maple timber production, sugar maple syrup production, hiking, aesthetic enjoyment and tourism. Nitrogen deposition contributes significantly to eutrophication in many estuaries affecting fish production, swimming, boating, aesthetic enjoyment and tourism. Ecosystem services are likely affected by nutrient enrichment in many natural and scenic terrestrial areas, affecting biodiversity, including habitat for rare and endangered species, fire control, hiking, aesthetic enjoyment and tourism.

B. Adequacy of the Current Standards

An important issue to be addressed in this review of the secondary standards for oxides of nitrogen and sulfur is whether, in view of the scientific evidence reflected in the ISA, additional information on exposure and risk discussed in the REA, and conclusions drawn from the PA, the current standards provide adequate protection of public welfare. In this review, consideration is given to the adequacy of the current standards with regard to both the direct effects of exposure to gaseous oxides of nitrogen and sulfur on vegetation and on potentially adverse deposition-related effects on sensitive aquatic and terrestrial ecosystems. This section is drawn from section II.D of the proposal. The following discussion summarizes the considerations related to the adequacy of the standards as discussed in the PA (section II.B.1), CASAC's views on adequacy (section II.B.2), and the Administrator's proposed conclusions on the adequacy of the current standards.

1. Adequacy Considerations

This discussion is based on the information presented in the PA and includes considerations related to the adequacy of the current NO_2 and SO_2 secondary standards with regard to direct effects (section II.B.1.a), as well as considerations related to both the appropriateness and the adequacy of protection of the current standards with regard to deposition-related effects (section II.B.1.b).

a. Adequacy of the Current Standards for Direct Effects

For oxides of nitrogen, the current secondary standard was set identical to the primary standard,[3] i.e., an annual standard set for NO_2 to protect against adverse effects on vegetation from direct exposure to ambient oxides of nitrogen. For oxides of sulfur, the current secondary standard is a 3-hour standard intended to provide protection for plants from the direct foliar damage associated with atmospheric concentrations of SO_2. In considering the adequacy of these standards, it is appropriate to consider whether they are adequate to protect against the direct effects on vegetation resulting from exposure to ambient oxides of nitrogen and sulfur, which was the basis for initially setting the standards in 1971. The ISA concludes that there was sufficient evidence to infer a causal relationship between exposure to SO_2, NO, NO_2 and PAN and injury to vegetation. Additional research on acute foliar injury has been limited and there is no evidence to suggest foliar injury below the levels of the current secondary standards. Based on information in the ISA, the PA concludes that there is sufficient evidence to suggest that the levels of the current standards are likely adequate to protect against phytotoxic effects caused by direct gas-phase exposure.

b. Appropriateness and Adequacy of the Current Standards for Deposition-related Effects

This section addresses two concepts necessary to evaluate the current standards in the context of deposition-related effects. First, appropriateness of the current standards is considered with regard to indicator, form, level and averaging time. This discussion includes particular emphasis on the indicators and forms of the current standards and the degree to which they are ecologically relevant with regard to deposition-related effects that vary spatially and temporally. Second, this section considers the current standards in terms of adequacy of protection.

i. Appropriateness

The ISA has established that the major effects of concern for this review are associated with deposition of nitrogen and sulfur caused by atmospheric concentrations of oxides of nitrogen and sulfur. As discussed below, the current standards are not directed toward depositional effects, and none of the elements of the current NAAQS—indicator, form, averaging time, and level—are suited for addressing the effects of nitrogen and sulfur deposition.

Four issues arise that call into question the ecological relevance of the structure of the current secondary standards for oxides of nitrogen and sulfur.

(1) The current SO_2 secondary standard (0.5 ppm SO_2 over a 3-hour average) does not utilize an averaging time that relates to an exposure period that is relevant for ecosystem impacts. The majority of deposition-related impacts are associated with depositional loads that occur over periods of months to years. This differs significantly from exposures associated with hourly concentrations of SO_2 as measured by the current secondary standard. By addressing short-term concentrations, the current SO_2 secondary standard, while protective against direct foliar effects from gaseous oxides of sulfur, does not take into account the findings of effects in the ISA, which notes the relationship between annual deposition of sulfur and acidification effects which are likely to be more severe and widespread than phytotoxic effects under current ambient conditions, and include effects from long-term and short-term deposition. Acidification is a process that occurs over time because the ability of an aquatic system to counteract acidic inputs is reduced as natural buffers are used more rapidly than they can be replaced through geologic weathering. The relevant period of exposure for ecosystems is, therefore, not the exposures captured in the short averaging time of the current SO_2 secondary standard. The current secondary standard for oxides of nitrogen is an annual standard (0.053 ppm averaged over 1 year) and as such the averaging time of the standard is more ecologically relevant.

(2) Current standards do not utilize appropriate atmospheric indicators. Nitrogen dioxide and SO_2 are used as the species of oxides of nitrogen and sulfur that are measured to determine compliance with the standards, but they do not capture all relevant chemical species of oxides of nitrogen and sulfur that contribute to deposition-related

[3] The current primary NO_2 standard has recently been changed to the 3-year average of the 98th percentile of the annual distribution of the 1 hour daily maximum of the concentration of NO_2. The current secondary standard remains as it was set in 1971.

effects. The ISA provides evidence that deposition-related effects are associated with *total* nitrogen and *total* sulfur deposition, and thus all chemical species of oxidized nitrogen and oxidized sulfur that are deposited will contribute to effects on ecosystems. Thus, by using atmospheric NO_2 and SO_2 concentrations as indicators, the current standards address only a fraction of total atmospheric oxides of nitrogen and sulfur, and do not take into account the effects from deposition of total atmospheric oxides of nitrogen and sulfur. This suggests that more comprehensive atmospheric indicators should be considered in designing ecologically relevant standards.

(3) Current standards reflect separate assessments of the two individual pollutants, NO_2 and SO_2, rather than assessing the joint impacts of deposition of nitrogen and sulfur to ecosystems. Recognizing the role that each pollutant plays in jointly affecting ecosystem indicators, functions, and services is vital to developing a meaningful standard. The clearest example of this interaction is in assessment of the impacts of acidifying deposition on aquatic ecosystems. Acidification in an aquatic ecosystem depends on the total acidifying potential of the nitrogen and sulfur deposition resulting from oxides of nitrogen and sulfur as well as the inputs from other sources of nitrogen and sulfur such as reduced nitrogen and non-atmospheric sources. It is the joint impact of the two pollutants that determines the ultimate effect on organisms within the ecosystem, and critical ecosystem functions such as habitat provision and biodiversity. Standards that are set independently are less able to account for the contribution of the other pollutant. This suggests that interactions between oxides of nitrogen and oxides of sulfur should be a critical element of the conceptual framework for ecologically relevant standards. There are also important interactions between oxides of nitrogen and sulfur and reduced forms of nitrogen, which also contribute to acidification and nutrient enrichment. It is important that the structure of the standards address the role of reduced nitrogen in determining the ecological effects resulting from deposition of atmospheric oxides of nitrogen and sulfur. Consideration will also have to be given to total loadings as ecosystems respond to all sources of nitrogen and sulfur.

(4) Current standards do not take into account variability in ecosystem sensitivity. Ecosystems are not uniformly distributed either spatially or temporally in their sensitivity to oxides of nitrogen and sulfur. Therefore, failure to account for the major determinants of variability, including geological and soil characteristics related to the sensitivity to acidification or nutrient enrichment, as well as atmospheric and landscape characteristics that govern rates of deposition, may lead to standards that do not provide requisite levels of protection across ecosystems. The current structures of the standards do not address the complexities in the responses of ecosystems to deposition of oxides of nitrogen and sulfur. Ecosystems contain complex groupings of organisms that respond in various ways to the alterations of soil and water that result from deposition of nitrogen and sulfur compounds. Different ecosystems therefore respond depending on a multitude of factors that control how deposition is integrated into the system. For example, the same levels of deposition falling on limestone dominated soils have a very different effect from those falling on shallow glaciated soils underlain with granite. One system may over time display no obvious detriment while the other may experience a catastrophic loss in fish communities. This degree of sensitivity is a function of many atmospheric factors that control rates of deposition as well as ecological factors that control how an ecosystem responds to that deposition. The current standards do not take into account spatial and seasonal variations, not only in depositional loadings, but also in sensitivity of ecosystems exposed to those loadings. Based on the discussion summarized above, the PA concludes that the current secondary standards for oxides of nitrogen and oxides of sulfur are not ecologically relevant in terms of averaging time, form, level or indicator.

ii. Adequacy of Protection

As described in the PA, ambient conditions in 2005 indicate that the current SO_2 and NO_2 secondary standards were not exceeded at that time (U.S. EPA, 2011, Figures 6–1 and 6–2) in locations where negative ecological effects have been observed. In many locations, SO_2 and NO_2 concentrations are substantially below the levels of the secondary standards. This pattern suggests that levels of deposition and any negative effects on ecosystems due to deposition of oxides of nitrogen and sulfur under recent conditions are occurring even though areas meet or are below current standards. In addition, based on conclusions in the REA, these levels will not decline in the future to levels below which it is reasonable to anticipate effects.

In determining the adequacy of the current secondary standards for oxides of nitrogen and sulfur the PA considered the extent to which ambient deposition contributes to loadings in ecosystems. Since the last review of the secondary standard for oxides of nitrogen, a great deal of information on the contribution of atmospheric deposition associated with ambient oxides of nitrogen has become available. The REA presents a thorough assessment of the contribution of oxidized nitrogen relative to total nitrogen deposition throughout the United States, and the relative contributions of ambient oxidized and reduced forms of nitrogen. The REA concludes that based on that analysis, ambient oxides of nitrogen are a significant component of atmospheric nitrogen deposition, even in areas with relatively high rates of reduced nitrogen deposition. In addition, atmospheric deposition of oxidized nitrogen contributes significantly to total nitrogen loadings in nitrogen sensitive ecosystems.

The ISA summarizes the available studies of relative nitrogen contribution and finds that in much of the United States, oxides of nitrogen contribute from 50 to 75 percent of total atmospheric deposition relative to total reactive nitrogen, which includes oxidized and reduced nitrogen species (U.S. EPA, 2008, section 2.8.4). Although the proportion of total nitrogen loadings associated with atmospheric deposition of nitrogen varies across locations, the ISA indicates that atmospheric nitrogen deposition is the main source of new anthropogenic nitrogen to most headwater streams, high elevation lakes, and low-order streams. Atmospheric nitrogen deposition contributes to the total nitrogen load in terrestrial, wetland, freshwater and estuarine ecosystems that receive nitrogen through multiple pathways. In several large estuarine systems, including the Chesapeake Bay, atmospheric deposition accounts for between 10 and 40 percent of total nitrogen loadings (U.S. EPA, 2008).

Atmospheric concentrations of oxides of sulfur account for nearly all sulfur deposition in the U.S. For the period 2004–2006, mean sulfur deposition in the United States was greatest east of the Mississippi River with the highest deposition amount, 21.3 kg S/ha-yr, in the Ohio River Valley where most recording stations reported 3-year averages >10 kg S/ha-yr. Numerous other stations in the East reported S deposition >5 kg S/ha-yr. Total sulfur deposition in the United States west of

the 100th meridian was relatively low, with all recording stations reporting <2 kg S/ha-yr and many reporting <1 kg S/ha-yr. Sulfur was primarily deposited in the form of wet SO_4^{2-} followed in decreasing order by a smaller proportion of dry SO_2 and a much smaller proportion of deposition as dry SO_4^{2-}.

As discussed throughout the REA (U.S. EPA, 2009 and section II.B above), there are several key areas of risk that are associated with ambient concentrations of oxides of nitrogen and sulfur. As noted earlier, in previous reviews of the secondary standards for oxides of nitrogen and sulfur, the standards were designed to protect against direct exposure of plants to ambient concentrations of the pollutants. A significant shift in understanding of the effects of oxides of nitrogen and sulfur has occurred since the last reviews, reflecting the large amount of research that has been conducted on the effects of deposition of nitrogen and sulfur to ecosystems. The most significant current risks of adverse effects to public welfare are those related to deposition of oxides of nitrogen and sulfur to both terrestrial and aquatic ecosystems. These risks fall into two categories, acidification and nutrient enrichment, which were emphasized in the REA as most relevant to evaluating the adequacy of the existing standards in protecting public welfare from adverse ecological effects.

(a) Aquatic Acidification

The focus of the REA case studies was to determine whether deposition of sulfur and oxidized nitrogen in locations where ambient oxides of nitrogen and sulfur were at or below the current standards resulted in acidification and related effects, including episodic acidification and mercury methylation. Based on the case studies conducted for lakes in the Adirondacks and streams in Shenandoah National Park (case studies are discussed more fully in section II.B and U.S. EPA, 2009), there is significant risk to acid sensitive aquatic ecosystems at atmospheric concentrations of oxides of nitrogen and sulfur at or below the current standards. The REA also strongly supports a relationship between atmospheric deposition of oxides of nitrogen and sulfur and loss of ANC in sensitive ecosystems and indicates that ANC is an excellent indicator of aquatic acidification. The REA also concludes that at levels of deposition associated with oxides of nitrogen and sulfur concentrations at or below the current standards, ANC levels are expected to be below benchmark values that are associated with significant losses in fish species richness.

Significant portions of the United States are acid sensitive, and current deposition levels exceed those that would allow recovery of the most acid sensitive lakes in the Adirondacks (U.S. EPA, 2008, Executive Summary). In addition, because of past loadings, areas of the Shenandoah are sensitive to current deposition levels (U.S. EPA, 2008, Executive Summary). Parts of the West are naturally less sensitive to acidification and subjected to lower deposition (particularly oxides of sulfur) levels relative to the eastern United States, and as such, less focus in the ISA is placed on the adequacy of the existing standards in these areas, with the exception of the mountainous areas of the West, which experience episodic acidification due to deposition.

In describing the effects of acidification in the two case study areas the REA uses the approach of describing benchmarks in terms of ANC values. Many locations in sensitive areas of the United States have ANC levels below benchmark levels for ANC classified as severe, elevated, or moderate concern (U.S. EPA, 2011, Figure 2–1). The average current ANC levels across 44 lakes in the Adirondack case study area is 62.1 μeq/L (moderate concern). However, 44 percent of lakes had deposition levels exceeding the critical load for an ANC of 50 μeq/L (elevated), and 28 percent of lakes had deposition levels exceeding the (higher) critical load for an ANC of 20 μeq/L (severe) (U.S. EPA, 2009, section 4.2.4.2). This information indicates that almost half of the 44 lakes in the Adirondacks case study area are at an elevated concern level, and almost a third are at a severe concern level. These levels are associated with greatly diminished fish species diversity, and losses in the health and reproductive capacity of remaining populations. Based on assessments of the relationship between number of fish species and ANC level in both the Adirondacks and Shenandoah areas, the number of fish species is decreased by over half at an ANC level of 20 μeq/L relative to an ANC level at 100 μeq/L (U.S. EPA, 2009, Figure 4.2–1). When extrapolated to the full population of lakes in the Adirondacks area using weights based on the EMAP probability survey (U.S. EPA, 2009, section 4.2.6.1), 36 percent of lakes exceeded the critical load for an ANC of 50 μeq/L and 13 percent of lakes exceeded the critical load for an ANC of 20 μeq/L.

Many streams in the Shenandoah case study area also have levels of deposition that are associated with ANC levels classified as severe, elevated, or moderate concern. The average ANC under recent conditions for the 60 streams evaluated in the Shenandoah case study area is 57.9 μeq/L, indicating moderate concern. However, 85 percent of these streams had recent deposition exceeding the critical load for an ANC of 50 μeq/L, and 72 percent exceeded the critical load for an ANC of 20 μeq/L. As with the Adirondacks area, this information suggests that ANC levels may decline in the future and significant numbers of sensitive streams in the Shenandoah area are at risk of adverse impacts on fish populations if recent conditions persist. Many other streams in the Shenandoah area are also likely to experience conditions of elevated to severe concern based on the prevalence in the area of bedrock geology associated with increased sensitivity to acidification suggesting that effects due to stream acidification could be widespread in the Shenandoah area (U.S. EPA, 2009, section 4.2.6.2).

In addition to these chronic acidification effects, the ISA notes that ''consideration of episodic acidification greatly increases the extent and degree of estimated effects for acidifying deposition on surface waters'' (U.S. EPA, 2008, section 3.2.1.6). Some studies show that the number of lakes that could be classified as acid-impacted based on episodic acidification is 2 to 3 times the number of lakes classified as acid-impacted based on chronic ANC. These episodic acidification events can have long-term effects on fish populations (U.S. EPA, 2008, section 3.2.1.6). Under recent conditions, episodic acidification has been observed in locations in the eastern United States and in the mountainous western United States (U.S. EPA, 2008, section 3.2.1.6).

The ISA, REA and PA all conclude that the current standards are not adequate to protect against the adverse impacts of aquatic acidification on sensitive ecosystems. A recent survey, as reported in the ISA, found sensitive streams in many locations in the United States, including the Appalachian Mountains, the Coastal Plain, and the Mountainous West (U.S. EPA, 2008, section 4.2.2.3). In these sensitive areas, between 1 and 6 percent of stream kilometers are chronically acidified. The REA further concludes that both the Adirondack and Shenandoah case study areas are currently receiving deposition from ambient oxides of nitrogen and sulfur in excess of their ability to neutralize such inputs. In addition, based on the current emission scenarios, forecast modeling out to the year 2020 as well as 2050 indicates a large number of streams in these areas will still be

adversely impacted (section II.B). Based on these considerations, the PA concludes that the current secondary NAAQS for oxides of nitrogen and sulfur do not provide adequate protection of sensitive ecosystems with regard to aquatic acidification.

(b) Terrestrial Acidification

Based on the terrestrial acidification case studies, Kane Experimental Forest in Pennsylvania and Hubbard Brook Experimental Forest described in section II.B of sugar maple and red spruce habitat, the REA concludes that there is significant risk to sensitive terrestrial ecosystems from acidification at atmospheric concentrations of NO_2 and SO_2 at or below the current standards. The ecological indicator selected for terrestrial acidification is the BC/Al, which has been linked to tree health and growth. The results of the REA strongly support a relationship between atmospheric deposition of oxides of nitrogen and sulfur and BC/Al, and that BC/Al is a good indicator of terrestrial acidification. At levels of deposition associated with oxides of nitrogen and sulfur concentrations at or below the current standards, BC/Al levels are expected to be below benchmark values that are associated with significant effects on tree health and growth. Such degradation of terrestrial ecosystems could affect ecosystem services such as habitat provisioning, endangered species, goods production (timber, syrup, etc.) among others.

Many locations in sensitive areas of the United States have BC/Al levels below benchmark levels classified as providing low to intermediate levels of protection to tree health. At a BC/Al ratio of 1.2 (intermediate level of protection), red spruce growth can be reduced by 20 percent. At a BC/Al ratio of 0.6 (low level of protection), sugar maple growth can be decreased by 20 percent. The REA did not evaluate broad sensitive regions. However, in the sugar maple case study area (Kane Experimental Forest), recent deposition levels are associated with a BC/Al ratio below 1.2, indicating between intermediate and low level of protection, which would indicate the potential for a greater than 20 percent reduction in growth. In the red spruce case study area (Hubbard Brook Experimental Forest), recent deposition levels are associated with a BC/Al ratio slightly above 1.2, indicating slightly better than an intermediate level of protection (U.S. EPA, 2009, section 4.3.5.1).

Over the full range of sugar maple, 12 percent of evaluated forest plots exceeded the critical loads for a BC/Al ratio of 1.2, and 3 percent exceeded the critical load for a BC/Al ratio of 0.6. However, there was large variability across states. In New Jersey, 67 percent of plots exceeded the critical load for a BC/Al ratio of 1.2, while in several states on the outskirts of the range for sugar maple (e.g. Arkansas, Illinois) no plots exceeded the critical load for a BC/Al ratio of 1.2. For red spruce, overall 5 percent of plots exceeded the critical load for a BC/Al ratio of 1.2, and 3 percent exceeded the critical load for a BC/Al ratio of 0.6. In the major red spruce producing states (Maine, New Hampshire, and Vermont), critical loads for a BC/Al ratio of 1.2 were exceeded in 0.5, 38, and 6 percent of plots, respectively.

The ISA, REA and PA all conclude that the current standards are not adequate to protect against the adverse impacts of terrestrial acidification on sensitive ecosystems. As stated in the REA and PA, the main drawback, with the understanding of terrestrial acidification lies in the sparseness of available data by which we can predict critical loads and that the data are based on laboratory responses rather than field measurements. Other stressors that are present in the field but that are not present in the laboratory may confound this relationship. The REA does however, conclude that the case study results, when extended to a 27 state region, show that nitrogen and sulfur acidifying deposition in the sugar maple and red spruce forest areas caused the calculated Bc/Al ratio to fall below 1.2 (the intermediate level of protection) in 12 percent of the sugar maple plots and 5 percent of the red spruce plots; however, results from individual states ranged from 0 to 67 percent of the plots for sugar maple and 0 to 100 percent of the plots for red spruce.

(c) Terrestrial Nutrient Enrichment

Nutrient enrichment effects are due to nitrogen loadings from both atmospheric and non-atmospheric sources. Evaluation of nutrient enrichment effects requires an understanding that nutrient inputs are essential to ecosystem health and that specific long-term levels of nutrients in a system affect the types of species that occur over long periods of time. Short-term additions of nutrients can affect species competition, and even small additions of nitrogen in areas that are traditionally nutrient poor can have significant impacts on productivity as well as species composition. Most ecosystems in the United States are nitrogen-limited, so regional decreases in emissions and deposition of airborne nitrogen compounds could lead to some decrease in growth of the vegetation that surrounds the targeted aquatic system but as discussed below evidence for this is mixed. Whether these changes in plant growth are seen as beneficial or adverse will depend on the nature of the ecosystem being assessed.

Information on the effects of changes in nitrogen deposition on forestlands and other terrestrial ecosystems is very limited. The multiplicity of factors affecting forests, including other potential stressors such as ozone, and limiting factors such as moisture and other nutrients, confound assessments of marginal changes in any one stressor or nutrient in forest ecosystems. The ISA notes that only a fraction of the deposited nitrogen is taken up by the forests, most of the nitrogen is retained in the soils (U.S. EPA, 2008, section 3.3.2.1). In addition, the ISA indicates that forest management practices can significantly affect the nitrogen cycling within a forest ecosystem, and as such, the response of managed forests to nitrogen deposition will be variable depending on the forest management practices employed in a given forest ecosystem (U.S. EPA, 2008, Annex C C.6.3). Increases in the availability of nitrogen in nitrogen-limited forests via atmospheric deposition could increase forest production over large non-managed areas, but the evidence is mixed, with some studies showing increased production and other showing little effect on wood production (U.S. EPA, 2008, section 3.3.9). Because leaching of nitrate can promote cation losses, which in some cases create nutrient imbalances, slower growth and lessened disease and freezing tolerances for forest trees, the net effect of increased N on forests in the United States is uncertain (U.S. EPA, 2008, section 3.3.9).

The scientific literature has many examples of the deleterious effects caused by excessive nitrogen loadings to terrestrial systems. Several studies have set benchmark values for levels of N deposition at which scientifically adverse effects are known to occur. Large areas of the country appear to be experiencing deposition above these benchmarks. The ISA indicates studies that have found that at 3.1 kg N/ha/yr, the community of lichens begins to change from acidophytic to tolerant species; at 5.2 kg N/ha/yr, the typical dominance by acidophytic species no longer occurs; and at 10.2 kg N/ha/yr, acidophytic lichens are totally lost from the community. Additional studies in the Colorado Front Range of the Rocky Mountain National Park support these findings. These three values (3.1, 5.2,

and 10.2 kg/ha/yr) are one set of ecologically meaningful benchmarks for the mixed conifer forest (MCF) of the pacific coast regions. Nearly all of the known sensitive communities receive total nitrogen deposition levels above the 3.1 N kg/ha/yr ecological benchmark according to the 12 km, 2002 CMAQ/NADP data, with the exception of the easternmost Sierra Nevadas. The MCFs in the southern portion of the Sierra Nevada forests and nearly all MCF communities in the San Bernardino forests receive total nitrogen deposition levels above the 5.2 N kg/ha/yr ecological benchmark.

Coastal Sage Scrub communities are also known to be sensitive to community shifts caused by excess nitrogen loadings. Studies have investigated the amount of nitrogen utilized by healthy and degraded CSS systems. In healthy stands, the authors estimated that 3.3 kg N/ha/yr was used for CSS plant growth. It is assumed that 3.3 kg N/ha/yr is near the point where nitrogen is no longer limiting in the CSS community and above which level community changes occur, including dominance by invasive species and loss of coastal sage scrub. Therefore, this amount can be considered an ecological benchmark for the CSS community. The majority of the known CSS range is currently receiving deposition in excess of this benchmark. Thus, the REA concludes that recent conditions where oxides of nitrogen ambient concentrations are at or below the current oxides of nitrogen secondary standards are not adequate to protect against anticipated adverse impacts from N nutrient enrichment in sensitive ecosystems.

(d) Aquatic Nutrient Enrichment

The REA aquatic nutrient enrichment case studies focused on coastal estuaries and revealed that while current ambient loadings of atmospheric oxides of nitrogen are contributing to the overall depositional loading of coastal estuaries, other non-atmospheric sources are contributing in far greater amounts in total, although atmospheric contributions are as large as some other individual source types. The ability of current data and models to characterize the incremental adverse impacts of nitrogen deposition is limited, both by the available ecological indicators, and by the inability to attribute specific effects to atmospheric sources of nitrogen. The REA case studies used ASSETS EI as the ecological indicator for aquatic nutrient enrichment. This index is a six level index characterizing overall eutrophication risk in a water body. This indictor is not sensitive to changes in nitrogen deposition within a single level of the index. In addition, this type of indicator does not reflect the impact of nitrogen deposition in conjunction with other sources of nitrogen.

Based on the above considerations, the REA concludes that the ASSETS EI is not an appropriate ecological indicator for estuarine aquatic eutrophication and that additional analysis is required to develop an appropriate indicator for determining the appropriate levels of protection from N nutrient enrichment effects in estuaries related to deposition of oxides of nitrogen. As a result, the EPA is unable to make a determination as to the adequacy of the existing secondary oxides of nitrogen standard in protecting public welfare from nitrogen nutrient enrichment effects in estuarine aquatic ecosystems.

Additionally, nitrogen deposition can alter species composition and cause eutrophication in freshwater systems. In the Rocky Mountains, for example, deposition loads of 1.5 to 2 kg/ha/yr which are well within current ambient levels are known to cause changes in species composition in diatom communities indicating impaired water quality (U.S. EPA, 2008, section 3.3.5.3). This suggests that the existing secondary standard for oxides of nitrogen does not protect such ecosystems and their resulting services from impairment.

(e) Other Effects

An important consideration in looking at the effects of deposition of oxides of sulfur in aquatic ecosystems is the potential for production of MeHg, a neurotoxic contaminant. The production of meaningful amounts of MeHg requires the presence of SO_4^{2-} and mercury, and where mercury is present, increased availability of SO_4^{2-} results in increased production of MeHg. There is increasing evidence on the relationship between sulfur deposition and increased methylation of mercury in aquatic environments; this effect occurs only where other factors are present at levels within a range to allow methylation. The production of MeHg requires the presence of SO_4^{2-} and mercury, but the amount of MeHg produced varies with oxygen content, temperature, pH and supply of labile organic carbon (U.S. EPA, 2008, section 3.4). In watersheds where changes in sulfate deposition did not produce an effect, one or several of those interacting factors were not in the range required for meaningful methylation to occur (U.S. EPA, 2008, section 3.4). Watersheds with conditions known to be conducive to mercury methylation can be found in the northeastern United States and southeastern Canada (U.S. EPA, 2009, section 6).

With respect to sulfur deposition and mercury methylation, the final ISA determined that ''[t]he evidence is sufficient to infer a causal relationship between sulfur deposition and increased mercury methylation in wetlands and aquatic environments.'' However, the EPA did not conduct a quantitative assessment of the risks associated with increased mercury methylation under current conditions. As such, the EPA is unable to make a determination as to the adequacy of the existing SO_2 secondary standards in protecting against welfare effects associated with increased mercury methylation.

c. Summary of Adequacy Considerations

In summary, the PA concludes that currently available scientific evidence and assessments clearly call into question the adequacy of the current standards with regard to deposition-related effects on sensitive aquatic and terrestrial ecosystems, including acidification and nutrient enrichment. Further, the PA recognizes that the elements of the current standards—indicator, averaging time, level and form—are not ecologically relevant, and are thus not appropriate for standards designed to provide such protection. Thus, the PA concludes that consideration should be given to establishing a new ecologically relevant multi-pollutant, multimedia standard to provide appropriate protection from deposition-related ecological effects of oxides of nitrogen and sulfur on sensitive ecosystems, with a focus on protecting against adverse effects associated with acidifying deposition in sensitive aquatic ecosystems.

2. CASAC Views

In a letter to the Administrator (Russell and Samet 2011a), the CASAC Oxides of Nitrogen and Oxides of Sulfur Panel, with full endorsement of the chartered CASAC, unanimously concluded that:

''EPA staff has demonstrated through the Integrated Science Assessment (ISA), Risk and Exposure Characterization (REA) and the draft PA that ambient NO_X and SO_X can have, and are having, adverse environmental impacts. The Panel views that the current NO_X and SO_X secondary standards should be retained to protect against direct adverse impacts to vegetation from exposure to gas phase exposures of these two families of air pollutants. Further, the ISA, REA and draft PA demonstrate that adverse impacts to aquatic ecosystems are also occurring due to deposition of NO_X and SO_X. Those impacts

include acidification and undesirable levels of nutrient enrichment in some aquatic ecosystems. The levels of the current NO_X and SO_X secondary NAAQS are not sufficient, nor the forms of those standards appropriate, to protect against adverse depositional effects; thus a revised NAAQS is warranted.''

In addition, with regard to the joint consideration of both oxides of nitrogen and oxides of sulfur as well as the consideration of deposition-related effects, CASAC concluded that the PA had developed a credible methodology for considering such effects. The Panel stated that ''the Policy Assessment develops a framework for a multi-pollutant, multimedia standard that is ecologically relevant and reflects the combined impacts of these two pollutants as they deposit to sensitive aquatic ecosystems.''

3. Administrator's Proposed Conclusions

Based on the above considerations and taking into account CASAC advice, in the proposed rule the Administrator considered the adequacy of the current NO_2 and SO_2 secondary standards with regard to both direct effects on vegetation, as well as on deposition-related effects on sensitive ecosystems. With regard to direct phytotoxic effects on vegetation, the Administrator concluded that the current secondary standards are adequately protective, and thus proposed to retain the current NO_2 and SO_2 secondary standards for that purpose.

With regard to deposition-related effects, the Administrator first considered the appropriateness of the structure of the current standards to address ecological effects of concern. Based on the evidence as well as considering the advice given by CASAC, the Administrator concluded that the elements of the current standards are not ecologically relevant and thus are not appropriate to provide protection of ecosystems. In considering the adequacy of protection with regard to deposition-related effects, the Administrator considered the full nature of ecological effects related to the deposition of ambient oxides of nitrogen and sulfur into sensitive ecosystems across the country. Based on the evidence and information evaluated in the ISA, REA, and PA, and taking into account CASAC advice, the Administrator concluded that current levels of oxides of nitrogen and sulfur are sufficient to cause acidification of both aquatic and terrestrial ecosystems, nutrient enrichment of terrestrial ecosystems and contribute to nutrient enrichment effects in estuaries that could be considered adverse, and that the current secondary standards do not provide adequate protection from such effects.

Having reached these conclusions, the Administrator determined that it was appropriate to consider alternative standards that are ecologically relevant. These considerations, as discussed below in section III, supported the conclusion that the current secondary standards are neither appropriate nor adequate to protect against deposition-related effects.

C. Comments on Adequacy of the Current Standards

The above sections outline the effects evidence and assessments (section II.A) used by the Administrator to inform her proposed judgments about the adequacy of the current secondary NO_2 and SO_2 standards with regard to both direct effects associated with gas-phase oxides of nitrogen and sulfur (section II.B.1) as well effects associated with deposition of oxides of nitrogen and sulfur to sensitive aquatic and terrestrial ecosystems (section II.B.2). This section discusses the comments received from the public regarding the adequacy of the current secondary standards with regard to both direct and deposition-related effects. Comments related to the EPA's authority to address deposition-related effects through the NAAQS are discussed above in section I.E. Comments related to the EPA's proposed conclusions regarding alternative secondary standards are discussed below in section III.D.

1. Adequacy of Current Secondary Standards To Address Direct Effects

The current secondary NO_2 and SO_2 secondary standards were set in 1971 to protect against direct effects of gaseous oxides of nitrogen and sulfur. For oxides of nitrogen, the current secondary NO_2 standard is an annual standard set to protect against adverse effects on vegetation from direct exposure to ambient oxides of nitrogen. For oxides of sulfur, the current secondary standard is a 3-hour standard intended to provide protection for plants from the direct foliar damage associated with atmospheric concentrations of SO_2. As discussed above in section II.B.1, the Administrator proposed to conclude that the current secondary standards are adequate to protect against direct phytotoxic effects on vegetation, and proposed to retain the current standards for that purpose. Many commenters supported the EPA's proposed decision to retain the current secondary standards for various reasons related to their comments on alternative standards (as discussed below in section III.D), a few commenters (Alliance of Automobile Manufacturers (AAM), Pennsylvania Dept. of Environmental Protection) specifically expressed the view that the current standards provide requisite protection from the direct effects on vegetation from exposures to gaseous oxides of nitrogen and sulfur, and no commenters opposed retention of the current secondary standards.

2. Adequacy of Current Secondary Standards to Address Deposition-Related Effects

As discussed above in section II.B.2, with regard to deposition-related effects, the Administrator proposed to conclude that the elements of the current secondary standards are not ecologically relevant, and thus not appropriate to provide protection of ecosystems, and that they do not provide adequate protection from such acidification and nutrient enrichment effects in both aquatic and terrestrial ecosystems. Having reached these proposed conclusions, she determined that it was appropriate to consider alternative standards that are ecologically relevant.

One group of commenters that addressed the adequacy of the current standards with regard to deposition-related effects included environmental organizations (Earthjustice, on behalf of the Appalachian Mountain Club, National Parks Conservation Association, Sierra Club, and Clean Air Council; the Center for Biological Diversity; the Nature Conservancy; Adirondack Council; Chesapeake Bay Foundation), the U.S. Department of the Interior, NESCAUM, New York Dept. of Environmental Conservation, and two tribes. These commenters generally expressed the view that the current secondary standards do not provide adequate protection from deposition-related effects. More specifically, some of these commenters stated that there was overwhelming evidence of adversity to sensitive aquatic ecosystems from acidifying deposition. These commenters cited a broad range of scientific evidence that aquatic acidification was ongoing under current conditions allowed by the current secondary standards, and that this acidification represented an adverse effect on public welfare. Several commenters noted that CASAC had agreed that deposition-related effects were ongoing and harmful and that current standards were not adequate to prevent these effects.

Among these commenters, some also expressed the view that current standards were not adequate to protect against terrestrial acidification or nutrient enrichment. The Department of

the Interior as well as Earthjustice noted that the current standards were not sufficient for these additional endpoints and cited ongoing harm under current conditions. Two tribes and the Center for Biological Diversity expressed the view that there was sufficient information to judge that the current standards were not adequate to protect against the adverse welfare effect of mercury methylation, contrary to the EPA's proposed conclusion that the available evidence was not sufficient to reach such a judgment. For example, The Forest County Potawatomi Community provided several citations regarding the relationships between aquatic acidification and mercury methylation and stated that there was sufficient evidence to find that the current standards were not adequate.

With regard to the adequacy of the current secondary standards for NO_2 and SO_2, the EPA concurs with commenters' assertions that the current standards do not provide adequate protection for ecosystems that are sensitive to aquatic acidification and that effects to these ecosystems are ongoing from ambient deposition of oxides of nitrogen and oxides of sulfur. The EPA also agrees that there is sufficient evidence to conclude that ambient deposition under the current secondary standards is causing or contributing to terrestrial acidification as well as nutrient enrichment in sensitive ecosystems. A complete discussion of considerations with regard to adequacy can be found in section II.B above. In short, the ISA has established that the major effects of concern for this review of the oxides of nitrogen and sulfur standards are associated with deposition of nitrogen and sulfur caused by atmospheric concentrations of oxides of nitrogen and sulfur. The current standards are not directed toward depositional effects, and none of the elements of the current NAAQS—indicator, form, averaging time, and level—are suited for addressing the effects of nitrogen and sulfur deposition. Additionally, although the proportion of total nitrogen loadings associated with atmospheric deposition of nitrogen varies across locations, the ISA indicates that atmospheric nitrogen deposition is the main source of new anthropogenic nitrogen to most headwater streams, high elevation lakes, and low-order streams. Atmospheric nitrogen deposition contributes to the total nitrogen load in terrestrial, wetland, freshwater and estuarine ecosystems that receive nitrogen through multiple pathways.

There are expansive data to indicate that the levels of deposition under the current standards are not sufficient to prevent adverse effects in ecosystems. With regard to aquatic acidification, recent data indicate that in the Adirondacks and Shenandoah areas, rates of acidifying deposition of oxides of nitrogen and sulfur are still well above pre-acidification (1860) conditions. Forty-four percent of Adirondack lakes and 85 percent of Shenandoah streams evaluated exceed the critical load for an ANC of 50 μeq/L, and have suffered loss of sensitive fish species. With regard to terrestrial acidification, the REA evaluated a small number of sensitive areas as case studies and showed the potential for reduced growth. When the methodology was extended to a 27-state region, similar results were found to indicate the potential for growth effects in sensitive forests. Nitrogen deposition can alter species composition and cause eutrophication in freshwater systems. In the Rocky Mountains, for example, current deposition levels, which are within the range associated with ambient nitrogen oxide levels meeting the current standard, are known to cause changes in species composition in diatom communities indicating impaired water quality. With regard to terrestrial nutrient enrichment, most terrestrial ecosystems in the United States are nitrogen-limited, and therefore they are sensitive to perturbation caused by nitrogen additions. Under recent conditions, nearly all of the known sensitive mixed conifer forest ecosystems receive total nitrogen deposition levels above the ecological benchmark for changes in lichen species. In addition, in Coastal Sage Scrub ecosystems in California, nitrogen deposition exceeds the benchmark above which nitrogen is no longer a limiting nutrient, leading to potential alterations in ecosystem composition. Therefore, the EPA concludes that the current standards are not adequate for these effects.

The EPA, however, while agreeing that there is a causal effect between deposition of sulfur and mercury methylation disagrees that there is sufficient evidence to make the quantitative associations that would be necessary to determine that the current standards were not adequate to protect against mercury methylation. The ISA concluded that evidence is sufficient to infer a casual relationship between sulfur deposition and increased mercury methylation in wetlands and aquatic environments. Since the rate of mercury methylation varies according to several spatial and biogeochemical factors whose influence has not been fully quantified, the correlation between sulfur deposition and methylmercury could not be quantified for the purpose of interpolating the association across waterbodies or regions. Therefore, since we are unable to quantify the relationship between atmospherically deposited oxides of sulfur and mercury methylation we cannot assess adequacy of protection. This subject is discussed more fully in section 6.2 of the REA (U.S. EPA, 2009).

Another group of commenters, (e.g. Utility Air Regulatory Group (UARG), Electric Power Research Institute (EPRI), American Petroleum Institute (API), AAM, and American Road and Transportation Builders Association (ARTBA)) generally took the position that the currently available information was not sufficient to make informed judgments about the adequacy of the current standards to address aquatic acidification effects. These commenters generally based this view on the complex nature of the interactions between pollutants and ecosystems and uncertainties in the models and analyses considered in this review. Several commenters asserted that there was not sufficient data available to determine the relationship between acidifying deposition of oxides of nitrogen and sulfur and adverse effects on aquatic ecosystems, such that there was not sufficient information to allow for the assessment of the adequacy of the current standards to provide appropriate protection from this effect. For example, AAM noted the uncertainties in models relating to dry deposition and questioned the linkages between ambient concentrations of oxides of nitrogen and sulfur and the amount of nitrogen and sulfur deposition. In addition to commenting on data limitations, UARG also expressed the view that the ecosystem services analyses included in the proposal were insufficient to make judgments about adversity to aquatic ecosystems resulting from acidifying deposition and that there is a lack of evidence demonstrating that quantifiable changes in public welfare would result from reductions in acidifying deposition. Many commenters within this group did not directly comment on the adequacy of the current standards to protect against aquatic acidification or other deposition-related effects, but instead expressed the view that the EPA did not have the authority to consider deposition-related effects in general or aquatic acidification in particular through the NAAQS. This comment and

the EPA's response are discussed above in section I.E.

With regard to the adequacy of the current standards to protect against aquatic acidification, the EPA disagrees with commenters' assertion that there is insufficient data to make linkages between deposition from the atmosphere and aquatic acidification effects. To the contrary, the EPA is confident that there is sufficient robust science to conclude that aquatic acidification is ongoing in sensitive ecosystems, that ambient deposition of oxides of nitrogen and oxides of sulfur are causative in many ecosystems nationwide and that the current standards are neither appropriate in form nor adequate in level to protect against such effects. The ISA concluded that there was a causal relationship between deposition of oxides of nitrogen and sulfur and NH_X and acidification of ecosystems. In addition, the ISA found that effects of acidifying deposition on ecosystems have been well studied over the past several decades, that vulnerable areas have been identified for the United States and that the wealth of available data has led to the development of robust ecological models used for predicting soil and surface water acidification. With regard to the scope of effects, the REA also concluded that the available data are robust and considered high quality. There is high confidence about the use of these data and their value for extrapolating to larger spatial areas. The EPA TIME/LTM network represents a source of long-term, representative sampling. Data on sulfate concentrations, nitrate concentrations and ANC from 1990 to 2006 used for this analysis as well as the EPA EMAP and Regional Environmental Monitoring and Assessment Program (REMAP) surveys, provide considerable data on surface water trends.

The EPA also disagrees with commenters' assessment of limitations in wet and dry deposition modeling. Further discussion of characterizing deposition with models can be found in section IV.C. Additionally, while the EPA recognizes that there are limitations associated with modeled deposition values, the linkages between model estimates of deposition and areas exhibiting aquatic acidification effects are consistent and persuasive in considering adequacy of the current standard. Section 2.3 of the PA and sections 2.8 and 2.10 of the ISA provide additional detailed discussions of deposition modeling and spatial resolution for deposition. CASAC concurred with the EPA's conclusion on this matter and encouraged the EPA to move forward in developing a new form of a standard which would address aquatic acidification. Thus, while the EPA is fully mindful of the limitations and uncertainties associated with the data and models, the EPA concludes that the available evidence provides strong scientific support for the view that harm from aquatic acidification is ongoing and attributable in large part to atmospheric deposition of reactive nitrogen and sulfur.

With regard to the commenters' reliance on ecosystem services analyses included in the proposal to make judgments about adversity and public welfare, the EPA disagrees that comprehensive ecosystems services analyses are necessary to determine adversity. Ecosystem services analyses are used in this review to inform the decisions made with regard to adequacy and as such are used in conjunction with other considerations in the discussion of adversity to public welfare. Section 4 of the PA further refines this discussion of adversity to public welfare. Additionally, the paradigm of adversity to public welfare as deriving from disruptions in ecosystem structure and function has been used broadly by the EPA to categorize effects of pollutants from the cellular to the ecosystem level. An evaluation of adversity to public welfare might consider the likelihood, type, magnitude, and spatial scale of the effect as well as the potential for recovery and any uncertainties relating to these considerations. Within this context, ecosystems services analyses are one of many tools used in this review to help inform the Administrator's decision on adversity. The EPA concludes that the analyses performed as part of this review are sufficient to support the decisions made by the Administrator with regard to the adequacy of the current standards.

D. Final Decisions on the Adequacy of the Current Standards

Based on the considerations discussed above, including CASAC advice and public comments, the Administrator believes that the conclusions reached in the proposed rule with regard to the adequacy of the current secondary standards for oxides of nitrogen and sulfur for direct and deposition-related effects continue to be valid. The Administrator recognizes that the purpose of the secondary standard is to protect against ''adverse'' effects resulting from exposure to oxides of nitrogen and sulfur, discussed above in section II.A. The Administrator also recognizes the need for conclusions as to the adequacy of the current standards for both direct and deposition-related effects as well as conclusions as to the appropriateness and ecological relevance of the current standards.

In considering what constitutes an ecological effect that is also adverse to the public welfare, the Administrator took into account the ISA conclusions regarding the nature and strength of the effects evidence, the risk and exposure assessment results, the degree to which the associated uncertainties should be considered in interpreting the results, the conclusions presented in the PA, and the views of CASAC and members of the public. On these bases, the Administrator concludes that the current secondary standards are adequate to protect against direct phytotoxic effects on vegetation. Thus, the Administrator has decided to retain the current secondary standards for oxides of nitrogen at 53 ppb,[4] annual average concentration, measured in the ambient air as NO_2, and the current secondary standard for oxides of sulfur at 0.5 ppm, 3-hour average concentration, measured in the ambient air as SO_2.

With regard to deposition-related effects, the Administrator first considered the appropriateness of the structure of the current secondary standards to address ecological effects of concern. Based on the evidence as well as considering the advice given by CASAC and public comments on this matter, the Administrator concludes that the elements of the current standards are not ecologically relevant and thus are not appropriate to provide protection of ecosystems. On the subject of adequacy of protection with regard to deposition-related effects, the Administrator considered the full nature of ecological effects related to the deposition of ambient oxides of nitrogen and sulfur into sensitive ecosystems across the country. Her conclusions are based on the evidence presented in the ISA with regard to acidification and nutrient enrichment effects, the findings of the REA with regard to scope and severity of the current and likely future effects of deposition, the synthesis of both the scientific evidence and risk and exposure results in the PA as to the adequacy of the current standards, and the advice of CASAC and public comments. After such consideration, the Administrator concludes that current levels of oxides of nitrogen and sulfur are sufficient to cause acidification of

[4] The annual secondary standard for oxides of nitrogen is being specified in units of ppb to conform to the current version of the annual primary standard, as specified in the final rule for the most recent review of the NO_2 primary NAAQS (75 FR 6531; February 9, 2010).

both aquatic and terrestrial ecosystems, nutrient enrichment of terrestrial ecosystems and contribute to nutrient enrichment effects in estuaries that could be considered adverse, and the current secondary standards do not provide adequate protection from such effects.

Having reached these conclusions, the Administrator determined that it was appropriate to consider alternative standards that are ecologically relevant, as discussed below in section III. These considerations further support her conclusion that the current secondary standards for oxides of nitrogen and sulfur are neither appropriate nor adequate to protect against deposition-related effects.

III. Rationale for Final Decisions on Alternative Secondary Standards

This section presents the rationale for the Administrator's final decisions regarding alternative secondary standards for oxides of nitrogen and sulfur to address deposition-related effects. Section III.A provides an overview of the aquatic acidification index (AAI) approach presented in the PA to address such effects related to aquatic acidification. Advice from CASAC on such a new approach is presented in section III.B. The Administrator's proposed conclusions on an AAI-based standard are presented in section III.C. Comments on an AAI-based standard are discussed in section III.D as well as in the Response to Comments document. The Administrator's final decisions regarding alternative secondary standards are presented in section III.E.

A. Overview of AAI Approach

Having reached the conclusion in the proposal that the current NO_2 and SO_2 secondary standards are not adequate to provide appropriate protection against potentially adverse deposition-related effects associated with oxides of nitrogen and sulfur, the Administrator then considered what new multi-pollutant standard might be appropriate, at this time, to address such effects on public welfare. The Administrator recognizes that the inherently complex and variable linkages between ambient concentrations of nitrogen and sulfur oxides, the related deposited forms of nitrogen and sulfur, and the ecological responses that are associated with public welfare effects call for consideration of a standard with an ecologically relevant design that reflects these linkages. The Administrator also recognizes that characterization of such complex and variable linkages in this review requires consideration of information and analyses that have important limitations and uncertainties.

Despite its complexity, an ecologically relevant multi-pollutant standard to address deposition-related effects would still appropriately be defined in terms of the same basic elements that are used to define any NAAQS—indicator, form, averaging time, and level. The form would incorporate additional structural elements that reflect relevant multi-pollutant and multimedia attributes. These structural elements include the use of an ecological indicator, tied to the ecological effect we are focused on, and other elements that account for ecologically relevant factors other than ambient air concentrations. All of these elements would be needed to enable a linkage from ambient air indicators to the relevant ecological effect to define an ecologically relevant standard. As a result, such a standard would necessarily be more complex than the NAAQS that have been set historically to address effects associated with ambient concentrations of a single pollutant.

More specifically, the Administrator considered an ecologically relevant multi-pollutant standard to address effects associated with acidifying deposition-related to ambient concentrations of oxides of nitrogen and sulfur in sensitive aquatic ecosystems. This focus is consistent with the information presented in the ISA, REA, and PA, which highlighted the greater quantity and quality of the available evidence and assessments associated with aquatic acidification relative to the information and assessments available for other deposition-related effects, including terrestrial acidification and aquatic and terrestrial nutrient enrichment. Based on its review of these documents, CASAC agreed that aquatic acidification should be the focus for developing a new multi-pollutant standard in this review. In reaching conclusions about an air quality standard designed to address deposition-related aquatic acidification effects, the Administrator also recognizes that such a standard may also provide some degree of protection against other deposition-related effects.

As discussed in chapter 7 of the PA, the development of a new multi-pollutant ambient air quality standard to address deposition-related aquatic acidification effects recognizes that it is appropriate to consider a nationally applicable standard for protection against adverse effects of aquatic acidification on public welfare. At the same time, the PA recognizes the complex and heterogeneous interactions between ambient air concentrations of nitrogen and sulfur oxides, the related deposition of nitrogen and sulfur, and associated ecological responses. The development of such a standard also needs to take into account the limitations and uncertainties in the available information and analyses upon which characterization of such interactions are based. The approach used in the PA also recognizes that while such a standard would be national in scope and coverage, the effects to public welfare from aquatic acidification will not occur to the same extent in all locations in the United States, given the inherent variability of the responses of aquatic systems to the effects of acidifying deposition. This contrasts with the relatively more homogeneous relationships between ambient air concentrations of air pollutants and the associated inhalation exposures and related public health responses that are typically considered in setting primary NAAQS.

As discussed above in section II–A, many locations in the United States are naturally protected against acid deposition due to underlying geological conditions. Likewise, some locations in the United States, including lands managed for commercial agriculture and forestry, are not likely to be negatively impacted by current levels of nitrogen and sulfur deposition. As a result, while a new ecologically relevant secondary standard would apply everywhere, it would be structured to account for differences in the sensitivity of ecosystems across the country. This would allow for appropriate protection of sensitive aquatic ecosystems, which are relatively pristine and wild and generally in rural areas, and the services provided by such sensitive ecosystems, without requiring more protection than is needed elsewhere.

As discussed below, the multi-pollutant standard developed in the PA would employ (1) Total reactive oxidized nitrogen (NO_y) and oxides of sulfur (SO_X) as the atmospheric ambient air indicators; (2) a form that takes into account variable factors, such as atmospheric and ecosystem conditions that modify the amounts of deposited nitrogen and sulfur; the distinction between oxidized and reduced forms of nitrogen; effects of deposited nitrogen and sulfur on aquatic ecosystems in terms of the ecological indicator ANC; and the representativeness of water bodies within a defined spatial area; (3) a multi-year averaging time, and (4) a standard level defined in terms of a single, national target ANC value that, in the context of the above form, identifies the various levels of

concentrations of NO_y and SO_X in the ambient air that would meet the standard. The form of such a standard has been defined by an index, AAI, which reflects the relationship between ambient concentrations of NO_y and SO_X and aquatic acidification effects that result from nitrogen and sulfur deposition-related to these ambient concentrations.

In summarizing the considerations associated with such an air quality standard to address deposition-related aquatic acidification effects, as discussed more fully in sections III.A–F of the proposal and in the PA, the following sections focus on each element of the standard, including ambient air indicators (section III.A.1), form (section III.A.2), averaging time (section III.A.3), and level (section III.A.4). Considerations related to important uncertainties inherent in such an approach are discussed in section III.A.5.

1. Ambient Air Indicators

The PA concludes that ambient air indicators other than NO_2 and SO_2 should be considered as the appropriate indicators of oxides of nitrogen and sulfur in the ambient air for protection against the acidification effects associated with deposition of the associated nitrogen and sulfur. This conclusion is based on the recognition that all forms of nitrogen and sulfur in the ambient air contribute to deposition and resulting acidification, and as such, NO_2 and SO_2 are incomplete ambient air indicators. In principle, the indicators should represent the species that are associated with oxides of nitrogen and sulfur in the ambient air and can contribute acidifying deposition. This includes both the species of oxides of nitrogen and sulfur that are directly emitted as well as species transformed in the atmosphere from oxides of nitrogen and sulfur that retain the nitrogen and sulfur atoms from directly emitted oxides of nitrogen and sulfur. All of these compounds are associated with oxides of nitrogen and sulfur in the ambient air and can contribute to acidifying deposition.

The PA focuses in particular on the various compounds with nitrogen or sulfur atoms that are associated with oxides of nitrogen and sulfur, because the acidifying potential is specific to nitrogen and sulfur, and not other atoms (e.g., H, C, O) whether derived from the original source of oxides of nitrogen and sulfur emissions or from atmospheric transformations. For example, the acidifying potential of each molecule of NO_2, NO, HNO_3 or PAN is identical, as is the potential for each molecule of SO_2 or ion of particulate sulfate (p-SO_4). Each atom of sulfur affords twice the acidifying potential of each atom of nitrogen.

a. Oxides of Sulfur

As discussed in the PA (U.S. EPA, 2011, section 7.1.1), oxides of sulfur include the gases sulfur monoxide (SO), SO_2, sulfur trioxide (SO_3), disulfur monoxide (S_2O), and particulate-phase sulfur compounds (referred to as SO_4) that result from gas-phase sulfur oxides interacting with particles. However, the sum of SO_2 and SO_4 does represent virtually the entire ambient air mass of sulfur that contributes to acidification. In addition to accounting for virtually all the potential for acidification from oxidized sulfur in the ambient air, there are reliable methods to monitor the concentrations of SO_2 and particulate SO_4. The PA concludes that the sum of SO_2 and SO_4, referred to as SO_X, are appropriate ambient air indicators of oxides of sulfur because they represent virtually all of the acidification potential of ambient air oxides of sulfur and there are reliable methods suitable for measuring SO_2 and SO_4.

b. Oxides of Nitrogen

As discussed in the PA (U.S. EPA, 2011, section 7.1.2), NO_y, as defined in chapter 2 of the PA, incorporates basically all of the oxidized nitrogen species that have acidifying potential and as such, NO_y should be considered as an appropriate indicator for oxides of nitrogen. Total reactive oxidized nitrogen is an aggregate measure of NO and NO_2 and all of the reactive oxidized products of NO and NO_2. That is, NO_y is a group of nitrogen compounds in which all of the compounds are either an oxide of nitrogen or compounds in which the nitrogen atoms came from oxides of nitrogen. Total reactive oxidized nitrogen is especially relevant as an ambient indicator for acidification in that it both relates to the oxides of nitrogen in the ambient air and also represents the acidification potential of all oxidized nitrogen species in the ambient air, whether an oxide of nitrogen or derived from oxides of nitrogen. The merits of other individual NO_y species, particularly total nitrate, are discussed in section 2 of the PA.

2. Form

Based on the evidence of the aquatic acidification effects caused by the deposition of NO_y and SO_X, the PA (U.S. EPA, 2011, section 7.2) presents the development of a new form that is ecologically relevant for addressing such effects. The conceptual design for the form of such a standard includes three main components: an ecological indicator, deposition metrics that relate to the ecological indicator, and a function that relates ambient air indicators to deposition metrics. Collectively, these three components link the ecological indicator to ambient air indicators, as illustrated below in Fig III–1.

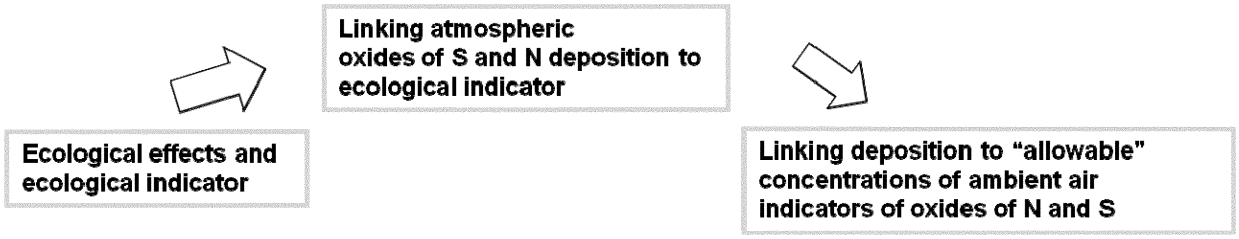


Figure 1II-1. Conceptual design of the form of an aquatic acidification standard for oxides of nitrogen and sulfur

The simplified flow diagram in Figure III–1 compresses the various atmospheric, biological, and geochemical processes associated with acidifying deposition to aquatic ecosystems into a simplified conceptual picture. The ecological indicator (left box) is related to atmospheric deposition through biogeochemical ecosystem models (middle box), which associate a target deposition load to a target ecological indicator. Once a target deposition is established, associated allowable air concentrations are determined (right box) through the relationships between ambient air concentration and deposition that are embodied in air quality models such as CMAQ. The PA describes the development and rationale for each of these components, as well the integration of these components into the full expression of the form of the standard using the concept of a national AAI that represents a target ANC level as a function of ambient air concentrations.

The AAI was designed to be an ecologically relevant form of the standard that determines the levels of NO_y and SO_X in the ambient air that would achieve a target ANC limit for the United States. The intent of the AAI is to weight atmospheric concentrations of oxides of nitrogen and sulfur by their propensity to contribute to acidification through deposition, given the fundamental acidifying potential of each pollutant, and to take into account the ecological factors that govern acid sensitivity in different ecosystems. The index also accounts for the contribution of reduced nitrogen to acidification. Thus, the AAI encompasses those attributes of specific relevance to protecting ecosystems from the acidifying potential of ambient air concentrations of NO_y and SO_X.

a. Ecological Indicator

This section summarizes the rationale in the PA for selecting ANC as the appropriate ecological indicator for consideration. Recognizing that ANC is not itself the causative or toxic agent for adverse aquatic acidification effects, the rationale for using ANC as the relevant ecological indicator is based on the following:

(1) The ANC is directly associated with the causative agents, pH and dissolved Al, both through empirical evidence and mechanistic relationships;

(2) Empirical evidence shows very clear and strong relationships between adverse effects and ANC;

(3) The ANC is a more reliable indicator from a modeling perspective, allowing use of a body of studies and technical analyses related to ANC and acidification to inform the development of the standard; and

(4) The ANC embodies the concept of acidification as posed by the basic principles of acid base chemistry and the measurement method used to estimate ANC and, therefore, serves as a direct index to protect against acidification.

Because ANC clearly links both to biological effects of aquatic acidification as well as to acidifying inputs of NO_y and SO_X deposition, the PA concludes that ANC is an appropriate ecological indicator for relating adverse aquatic ecosystem effects to acidifying atmospheric deposition of SO_X and NO_y, and is preferred to other potential indicators. In reaching this conclusion, the PA notes that in its review of the first draft PA, CASAC concluded that ''information on levels of ANC protective to fish and other aquatic biota has been well developed and presents probably the lowest level of uncertainty in the entire methodology'' (Russell and Samet, 2010a). In its more recent review of the second draft PA, CASAC agreed ''that acid neutralizing capacity is an appropriate ecological measure for reflecting the effects of aquatic acidification'' (Russell and Samet, 2010b; p. 4).

b. Linking ANC to Deposition

There is evidence to support a quantified relationship between deposition of nitrogen and sulfur and ANC. This relationship was analyzed in the REA for two case study areas, the Adirondack and Shenandoah Mountains, based on time-series modeling and observed trends. In the REA analysis, long-term trends in surface water nitrate, sulfate and ANC were modeled using MAGIC for the two case study areas. These data were used to compare recent surface water conditions in 2006 with preindustrial conditions (i.e., preacidification 1860). The results showed a marked increase in the number of lakes affected by acidifying deposition, characterized as a decrease in ANC levels, since the onset of anthropogenic nitrogen and sulfur deposition, as discussed in chapter 2 of the PA.

In the REA, the quantified relationship between deposition and ANC was investigated using ecosystem acidification models, also referred to as acid balance models or critical loads models (U.S. EPA, 2011, section 2 and U.S. EPA, 2009, section 4 and Appendix 4). These models quantify the relationship between deposition of nitrogen and sulfur and the resulting ANC in surface waters based on an ecosystem's inherent generation of ANC and ability to neutralize nitrogen deposition through biological and physical processes. A critical load is defined as the amount of acidifying atmospheric deposition of nitrogen and sulfur beyond which a target ANC is not reached. Relatively high critical load values imply that an ecosystem can accommodate greater deposition levels than lower critical loads for a specific target ANC level. Ecosystem models that calculate critical loads form the basis for linking deposition to ANC.

As discussed in chapter 2 of the PA, both dynamic and steady-state models calculate ANC as a function of ecosystem attributes and atmospheric nitrogen and sulfur deposition, and can be used to calculate critical loads. Steady-state models are time invariant and reflect the long-term consequences associated with an ecosystem reaching equilibrium under a constant level of atmospheric deposition. Dynamic models are time variant and take into account the time dependencies inherent in ecosystem hydrology, soil and biological processes. Dynamic models like MAGIC can provide the time-series response of ANC to deposition whereas steady-state models provide a single ANC relationship to any fixed deposition level. Dynamic models naturally are more complex than steady-state models as they attempt to capture as much of the fundamental biogeochemical processes as practicable, whereas steady-state models depend on far greater parameterization and generalization of processes that is afforded, to some degree, by not having to account for temporal variability.

In the PA, a steady-state model is used to define the relevant critical load, which is the amount of atmospheric deposition of nitrogen (N) and sulfur (S) beyond which a target ANC is not achieved and sustained.[5] It is expressed as:

[5] This section discusses the linkages between deposition of nitrogen and sulfur and ANC. Section III.A.2.c then discusses the linkages between atmospheric concentrations of NO_y and SO_X and deposition of nitrogen and sulfur.

$$CL_{ANClim}(N + S) = ([BC]_0^* - [ANC_{lim}])Q + Neco \quad \text{(III-1)}$$

Where:

$CL_{ANClim}(N + S)$ is the critical load of deposition, with units of equivalent charge/(area-time);

$[BC]_0^*$ is the natural contribution of base cations from weathering, soil processes and preindustrial deposition, with units of equivalent charge/volume;

$[ANC_{lim}]$ is the target ANC value, with units of equivalent charge/volume;

Q is the catchment level runoff rate governed by water mass balance and dominated by precipitation, with units of distance/time; and

Neco is the amount of nitrogen deposition that is effectively neutralized by a variety of biological (e.g., nutrient uptake) and physical processes, with units of equivalent charge/(area-time).

Equation III–1 is a modified expression that adopts the basic formulation of the steady-state models that are described in chapter 2 of the PA. More detailed discussion of the rationale, assumptions and derivation of equation III–1, as well as all of the equations in this section, are included in Appendix B of the PA. The equation simply reflects the amount of deposition of nitrogen and sulfur from the atmosphere, $CL_{ANClim}(N + S)$, that is associated with a sustainable long-term ANC target, $[ANC_{lim}]$, given the capacity of the natural system to generate ANC, $[BC]_0^*$, and the capacity of the natural system to neutralize nitrogen deposition, *Neco.* This expression of critical load is valid when nitrogen deposition is greater than *Neco.*[6] The runoff rate, *Q,* allows for balancing mass in the two environmental mediums—atmosphere and catchment. This critical load expression can be focused on a single water system or more broadly. To extend applicability of the critical load expression (equation III–1) from the catchment level to broader spatial areas, the terms Q_r and CL_r, are used, which are the runoff rate and critical load, respectively, of the region over which all the atmospheric terms in the equation are defined.

As presented above, the terms S and N in the CL_{ANClim} (N + S) term broadly represent all species of sulfur or nitrogen that can contribute to acidifying deposition. This follows conventions used in the scientific literature that addresses critical loads, and it reflects all possible acidifying contributions from any sulfur or nitrogen species. For all practical purposes, S reflects SO_X as described above, the sum of sulfur dioxide gas and particulate sulfate. However, N in equation III–1 includes both oxidized forms, consistent with the ambient indicator, NO_y, in addition to the reduced nitrogen species, ammonia and ammonium ion, referred to as NH_X. The NH_X is included in the critical load formulation because it contributes to potentially acidifying nitrogen deposition. Consequently, from a mass balance or modeling perspective, the form of the standard needs to account for NH_X, as described below.

c. Linking Deposition to Ambient Air Indicators

The last major component of the form illustrated in Figure III–1 addresses the linkage between deposition of nitrogen and sulfur and concentrations of the ambient air indicators, NO_y and SO_X. To link ambient air concentrations with deposition, the PA defines a transference ratio, T, as the ratio of total wet and dry deposition to ambient concentration, consistent with the area and time period over which the standard is defined. To express deposition of NO_y and SO_X in terms of NO_y and SO_X ambient concentrations, two transference ratios were defined, where T_{SOx} equals the ratio of the combined dry and wet deposition of SO_X to the ambient air concentration of SO_X, and T_{NOy} equals the ratio of the combined dry and wet deposition of NO_y to the ambient air concentration of NO_y.

As described in chapter 7 of the PA, reduced forms of nitrogen (NH_X) are included in total nitrogen in the critical load equation, III–1. Reduced forms of nitrogen are treated separately, as are NO_y and SO_X, and the transference ratios are applied. This results in the following critical load expression that is defined explicitly in terms of the indicators NO_y and SO_X:

$$CL_{ANClim}(N + S) = ([BC]_0^* - [ANC_{lim}])Q + Neco = [NOy]T_{NOy} + [SOx]T_{SOx} + NHx \quad \text{(III-2)}$$

This is the same equation as III–1, with the deposition associated with the critical load translated to deposition from ambient air concentrations via transference ratios. In addition, deposition of reduced nitrogen, oxidized nitrogen and oxidized sulfur are treated separately.

Transference ratios are a modeled construct, and therefore cannot be compared directly to measurable quantities. Section III.B.3 of the proposal discusses approaches to quantifying these ratios that consider blending observational data and models. The PA more fully discusses the rationale underlying transference ratios, as well as analyses illustrating the relative stability and variability of these ratios.

d. Aquatic Acidification Index

Having established the transference ratios that translate atmospheric concentrations to deposition of nitrogen and sulfur and the various expressions that link atmospheric deposition of nitrogen and sulfur to ANC, the PA derived the following expression of these linkages, which separates reduced forms of nitrogen, NHx, from oxidized forms:

$$ANCcalc = \{ANClim + CL_r/Q_r\} - NHx/Q_r - T_{NOy}[NOy]/Q_r - T_{SOx}[SOx]/Q_r \quad \text{(III-3)}$$

[6] Because *Neco* is only relevant to nitrogen deposition, in rare cases where *Neco* is greater than the total nitrogen deposition, the critical load would be defined only in terms of acidifying deposition of sulfur and the *Neco* term in equation III–1 would be set to zero.

Equation III–3 is the basic expression of the form of a standard that translates the conceptual framework into an explicit expression that defines ANC as a function of the ambient air indicators, NO_y and SO_X, reduced nitrogen deposition,[7] and the critical load necessary to achieve a target ANC level. This equation calculates an expected ANC value based on ambient concentrations of NO_y and SO_X. The calculated ANC will differ from the target ANC (ANClim) depending on how much the nitrogen and sulfur deposition associated with NO_y, SO_X, and NH_X differs from the critical load associated with just achieving the target ANC.

Based on equation III–3, the PA defines an AAI that is more simply stated using terms that highlight the ambient air indicators:

$$AAI = F1 - F2 - F3[NOy] - F4[SOx] \quad \text{(III- 4)}$$

where the AAI represents the long-term (or steady-state) ANC level associated with ambient air concentrations of NO_y and SO_X. The factors F1 through F4 convey three attributes: a relative measure of the ecosystem's ability to neutralize acids (F1), the acidifying potential of reduced nitrogen deposition (F2), and the deposition-to-concentration translators for NO_y (F3) and SO_X (F4).

Specifically:

F1 = ANClim + CL_r/Q_r ;

F2 = NH_X/Q_r = NH_X deposition divided by Q_r;

F3 = T_{NOy}/Q_r ; T_{NOy} is the transference ratio that converts ambient air concentrations of NO_y to deposition of NO_y; and

F4 = T_{SOx}/Q_r ; T_{SOx} is the transference ratio that converts ambient air concentrations of SO_X to deposition of SO_X.

All of these factors include representative Q_r to maintain unit (and mass) consistency between the AAI and the terms on the right side of equation III–4.

The F1 factor is the target ANC level plus the amount of deposition (critical load) the ecosystem can receive and still achieve the target level. It incorporates an ecosystem's ability to generate acid neutralizing capacity through base cation supply ($[BC]^*_0$) and to neutralize acidifying nitrogen deposition through *Neco,* both of which are incorporated in the CL term. As noted above, because *Neco* can only neutralize nitrogen deposition (oxidized or reduced) there may be rare cases where *Neco* exceeds the combination of reduced and oxidized nitrogen deposition. Consequently, to ensure that the AAI equation is applicable in all cases that may occur, equation III–4 is conditional on total nitrogen deposition, {NH_X + F3[NO_y]}, being greater than *Neco.* In rare cases where *Neco* is greater than {NH_X + F3[NO_y]}, F2, F3, and Neco would be set equal to 0 in the AAI equation. The consequence of setting F2 and F3 to zero is simply to constrain the AAI calculation just to SO_X, as nitrogen would have no bearing on acidifying contributions in this case.

The PA concludes that equation III–4 (U.S. EPA, 2011, equation 7–12), which defines the AAI, is ecologically relevant and appropriate for use as the form of a national standard designed to provide protection for aquatic ecosystems from the effects of acidifying deposition associated with concentrations of oxides of nitrogen and sulfur in the ambient air. This AAI equation does not, however, in itself, define the spatial areas over which the terms of the equation would apply. To specify values for factors F1 through F4, it is necessary to define spatial areas over which these factors are determined. Thus, it is necessary to identify an approach for spatially aggregating water bodies into ecologically meaningful regions across the United States, as discussed below.

e. Spatial Aggregation

As discussed in the PA, one of the unique aspects of this form is the need to consider the spatial areas over which values for the F factors in the AAI equation are quantified. Ecosystems across the United States exhibit a wide range of geological, hydrological and vegetation characteristics that influence greatly the ecosystem parameters, Q, BC_0* and *Neco* that are incorporated in the AAI. Variations in ecosystem attributes naturally lead to wide variability in the sensitivities of water bodies in the United States to acidification, as well as in the responsiveness of water bodies to changes in acidifying deposition. Consequently, variations in ecosystem sensitivity, and the uncertainties inherent in characterizing these variations, must be taken into account in developing a national standard. In developing a secondary NAAQS to protect public welfare, the focus of the PA is on protecting sensitive populations of water bodies, not on each individual water body, which is consistent with the Agency's approach to protecting public health through primary NAAQS that focus on susceptible populations, not on each individual.

The approach used for defining ecologically relevant regions across the United States, along with approaches to characterizing each region as acid sensitive or relatively non-acid sensitive is discussed in detail in the PA (U.S. EPA, 2011, section 7.2.5). This characterization facilitates a more detailed analysis and focus on those regions that are relatively more acid sensitive, as well as avoiding over-protection in relatively non-acid sensitive regions that would receive limited benefit from reductions in the deposition of oxides of nitrogen and sulfur with respect to aquatic acidification effects.

Based on considering available classification schemes for spatial aggregation, the PA concludes that Omernik's ecoregion classification (as described at *http://www.epa.gov/wed/pages/ecoregions*) is the most appropriate method to consider for the purposes of this review. The PA concludes that ecoregion level III (Figure IV–1) resolution, with 84 defined ecoregions in the contiguous United States,[8] is the most appropriate level to consider for this purpose. The PA notes that the use of ecoregions is an appropriate spatial aggregation scheme for an AAI-based standard focused on deposition-related aquatic acidification effects, while many of the same ecoregion attributes may be applicable in subsequent NAAQS reviews that may address other deposition-related aquatic and terrestrial ecological effects. Because atmospheric deposition is modified by ecosystem attributes, the types of vegetation, soils, bedrock geology, and topographic features that are the basis of this ecoregion classification approach also will likely be key attributes for other deposition-related effects (e.g., terrestrial acidification, nutrient enrichment) that link atmospheric concentrations to an aquatic or terrestrial ecological indicator.

The PA used Omernik's original alkalinity data (U.S. EPA, 2011, section

[7] Because NH_X is characterized directly as deposition, not as an ambient concentration in this equation, no transference ratio is needed for this term.

[8] We note that an 85th area within Omernik's Ecoregion Level III is currently being developed for California.

2) and more recent ANC data to delineate two broad groupings of ecoregions: acid-sensitive and relatively non-acid sensitive ecoregions. This delineation was made to facilitate greater focus on those ecoregions with water bodies that generally have greater acid sensitivity and to avoid over-protection in regions with generally less sensitive water bodies. The approach used to delineate acid-sensitive and relatively non-acid sensitive regions included an initial numerical-based sorting scheme using ANC data, which categorized ecoregions with relatively high ANC values as being relatively non-acid sensitive. This initial delineation resulted in 29 of the 84 Omernik ecoregions being categorized as acid sensitive. Subsequently, land use data based on the 2006 National Land Cover Data base (NLCD, *http://www.epa.gov/mrlc/nlcd-2006.html*) were also considered to determine to what extent an ecoregion is of a relatively pristine and rural nature by quantifying the degree to which active management practices related to development and agriculture occur in each ecoregion, resulting in 22 relatively acid-sensitive ecoregions (Table III–1).

TABLE III–1—LIST OF 22 ACID-SENSITIVE AREAS

Ecoregion name	Ecoregion number
Ridge and Valley	8.4.1
Northern Appalachian Plateau and Uplands	8.1.3
Piedmont	8.3.4
Western Allegheny Plateau	8.4.3
Southwestern Appalachians	8.4.9
Boston Mountains	8.4.6
Blue Ridge	8.4.4
Ouachita Mountains	8.4.8
Central Appalachians	8.4.2
Northern Lakes and Forests	5.2.1
Maine/New Brunswick Plains and Hills	8.1.8
North Central Appalachians	5.3.3
Northern Appalachian and Atlantic Maritime Highlands	5.3.1
Columbia Mountains/Northern Rockies	6.2.3
Middle Rockies	6.2.10
Wasatch and Uinta Mountains	6.2.13
North Cascades	6.2.5
Cascades	6.2.7
Southern Rockies	6.2.14
Sierra Nevada	6.2.12
Idaho Batholith	6.2.15
Canadian Rockies	6.2.4

Consideration was also given to the use of naturally acidic conditions in defining relatively non-acid sensitive areas. For example, several of the ecoregions located in plains near the coast exhibit elevated dissolved organic carbon (DOC) levels, which is associated with naturally acidic conditions. The DOC in surface waters is derived from a variety of weak organic acid compounds generated from the natural availability and decomposition of organic matter from biota. Consequently, high DOC is associated with ''natural'' acidity, with the implication that a standard intended to protect against atmospheric contributions to acidity is not an area of focus. The evidence suggests that several of the more highly managed ecoregions in coastal or near coastal transition zones are associated with relatively high DOC values, typically exceeding on average 5 milligrams per liter, compared to other acid sensitive areas. Although there is sound logic to interpret naturally acidic areas as relatively non-acid sensitive, natural acidity indicators were not explicitly included in defining relatively non-acid sensitive areas as there does not exist a generally accepted quantifiable scientific definition of natural acidity. Approaches to explicitly define natural acidity likely will be pursued in future reviews of the standard.

Having concluded that the Omernik level III ecoregions are an appropriate approach to spatial aggregation for the purpose of a standard to address deposition-related aquatic acidification effects, the PA uses those ecoregions to define each of the factors in the AAI equation. As discussed below, factors F1 through F4 in equation III–4 are defined for each ecoregion by specifying ecoregion-specific values for each factor based on measured and modeled data.

i. Factor F1

As discussed above, factor F1 reflects a relative measure of an ecosystem's ability to neutralize acidifying deposition, and is defined as: $F1 = ANClim + CL_r/Q_r$. The value of F1 for each ecoregion would be based on a calculated critical load used to represent the ecoregion (CL_r) associated with a single national target ANC level (ANClim, discussed below in section III.D), as well as on a runoff rate (Q_r) to represent the region. To specify ecoregion-specific values for the term Q_r, the PA used the median value of the distribution of Q values that are available for water bodies within each ecoregion. To specify ecoregion-specific values for the term CL_r in factor F1, a distribution [9] of calculated critical loads was created for the water bodies in each ecoregion for which sufficient water quality and hydrology data are available.[10] The specified critical load was then defined to be a specific percentile of the distribution of critical loads in the ecoregion. Thus, for example, using the 90th percentile means that within an ecoregion, the goal would be for 90 percent of the water bodies to have higher calculated critical loads than the specified critical load. That is, if the specified critical load were to occur across the ecoregion, the goal would be for 90 percent of the water bodies to achieve the national ANC target or better.

The specific percentile selected as part of the definition of F1 is an important parameter that directly impacts the critical load specified to represent each ecoregion, and therefore the degree of protectiveness of the standard. A higher percentile corresponds to a lower critical load and, therefore, to lower allowable ambient air concentrations of NO_y and SO_X and related deposition to achieve a target AAI level. In conjunction with the other terms in the AAI equation, alternative forms can be appropriately characterized in part by identifying a range of alternative percentiles. The choice of an appropriate range of percentiles to consider for acid-sensitive and relatively non-acid sensitive ecoregions, respectively, is discussed below.

For relatively acid-sensitive ecoregions, the PA concludes it is appropriate to consider percentiles in the range of the 70th to the 90th percentile (of sensitivity). This conclusion is based on the judgment that it would not be appropriate to represent an ecoregion with the lowest or near lowest critical load, so as to avoid potential extreme outliers that can be seen to exist at the extreme end of the data distributions, which would not be representative of the population of acid sensitive water bodies within the ecoregion and could lead to an overly protective standard. At the same time, in considering ecoregions that are inherently acid sensitive, it is judged to be appropriate to limit the lower end of the range for consideration to the 70th percentile, a value well above the median of the distribution, so that a substantial majority of acid-sensitive water bodies are protected. Since the percentile value influences the relative

[9] The distribution of critical loads was based on CL values calculated with Neco at the lake level. Consideration could also be given to using a distribution of CLs without Neco and adding the ecoregion average Neco value to the nth percentile critical load. This would avoid cases where the lake-level Neco value potentially could be greater than total nitrogen deposition. The CL at the lake level represents the CL for the lake to achieve the specified national target ANC value.

[10] The PA judged the data to be sufficient for this purpose if data are available from more than 10 water bodies in an ecoregion.

degree of protectiveness afforded by the AAI approach, the degree of confidence in characterizing the representativeness of sampled water bodies relative to all water bodies within an ecoregion is a critical issue, and it is important to continually improve this confidence.

For relatively non-acid sensitive ecoregions, the PA concludes it is appropriate to consider the use of a range of percentiles that extends lower than the range identified above for acid-sensitive ecoregions. Consideration of a lower percentile would avoid representing a relatively non-acid sensitive ecoregion by a critical load associated with relatively more acid-sensitive water bodies. In particular, the PA concludes it is appropriate to focus on the median or 50th percentile of the distribution of critical loads so as to avoid over-protection in such ecoregions.

ii. Factor F2, F3 and F4

As discussed above, factor F2 is the amount of reduced nitrogen deposition within an ecoregion, including the deposition of both ammonia gas and ammonium ion, and is defined as: $F2 = NH_X/Q_r$. The PA calculated the representative runoff rate, Q_r, using a similar approach as noted above for factor F1; i.e., the median value of the distribution of Q values that are available for water bodies within each ecoregion. In the PA, 2005 CMAQ model simulations over 12-km grids are used to calculate an average value of NH_X for each ecoregion. The NH_X term is based on annual average model outputs for each grid cell, which are spatially averaged across all the grid cells contained in each ecoregion to calculate a representative annual average value for each ecoregion. The PA concludes that this approach of using spatially averaged values is appropriate for modeling, largely due to the relatively rapid mixing of air masses that typically results in relatively homogeneous air quality patterns for regionally dispersed pollutants. In addition, there is greater confidence in using spatially averaged modeled atmospheric fields than in using modeled point-specific fields.

This averaging approach is also used for the air concentration and deposition terms in factors F3 and F4, which are the ratios that relate ambient air concentrations of NO_y and SO_X to the associated deposition, and are defined as follows: $F3 = T_{NOy}/Q_r$ and $F4 = T_{SOx}/Q_r$. T_{NOy} is the transference ratio that converts ambient air concentrations of NO_y to deposition of NO_y and T_{SOx} is the transference ratio that converts ambient air concentrations of SO_X to deposition of SO_X. The transference ratios are based on the 2005 CMAQ simulations, using average values for each ecoregion, as noted above for factor F2. More specifically, the transference ratios are calculated as the annual deposition of NO_y or SO_X spatially averaged across the ecoregion and divided by the annual ambient air concentration of NO_y or SO_X, respectively, spatially averaged across the ecoregion.

f. Summary of the AAI Form

The PA developed an ecologically relevant form of an ambient air quality standard to address deposition-related aquatic acidification effects using an equation to calculate an AAI value in terms of the ambient air indicators of oxides of nitrogen and sulfur and the relevant ecological and atmospheric factors that modify the relationships between the ambient air indicators and ANC. Recognizing the spatial variability of such factors across the United States, the PA concludes it is appropriate to divide the country into ecologically relevant regions, characterized as acid-sensitive or relatively non-acid sensitive, and specify the value of each of the factors in the AAI equation for each such region.

Using the equation, a value of AAI can be calculated for any measured values of ambient NO_y and SO_X. For such a NAAQS, the Administrator would set a single, national value for the level of the AAI used to determine achievement of the NAAQS, as summarized below in section III.A.4. The ecoregion-specific values for factors F1 through F4 would be specified by the EPA based on the most recent data and CMAQ model simulations, and codified as part of such a standard. These factors would be reviewed and updated as appropriate in the context of each periodic review of the NAAQS.

3. Averaging Time

Reflecting a focus on long-term effects of acidifying deposition, the PA developed the AAI that links ambient air indicators to deposition-related ecological effects, in terms of several factors, F1 through F4. As discussed above, these factors are all calculated as annual average values, whether based on water quality and hydrology data or on CMAQ model simulations. In the context of a standard defined in terms of the AAI, the PA concludes that it is appropriate to consider the same annual averaging time for the ambient air indicators as is used for the factors in the AAI equation. As noted in chapter 3 of the ISA, protection against episodic acidity events can be achieved by establishing a higher chronic ANC level.

The PA also considered interannual variability in both ambient air quality and in precipitation, which is directly related to the deposition of oxides of nitrogen and sulfur from the ambient air. While ambient air concentrations show year-to-year variability, often the year-to-year variability in precipitation is considerably greater, given the highly stochastic nature of precipitation. The use of multiple years over which annual averages are determined would dampen the effects of interannual variability in both air quality and precipitation. Consequently, the PA concludes that an annual averaging time based on the average of each year over a consecutive 3- to 5-year period is appropriate to consider for the ambient air indicators NO_y and SO_X.

4. Level

The PA concludes that the level of a standard for aquatic acidification based on the AAI would be defined in terms of a single, national value of the AAI. Such a standard would be met at a monitoring site when the multi-year average of the calculated annual values of the AAI was equal to or *above* the specified level of the standard.[11] The annual values of the AAI would be calculated based on the AAI equation using the assigned ecoregion-specific values for factors F1 through F4 and monitored annual average NO_y and SO_X concentrations. Since the AAI equation is based on chronic ANC as the ecological indicator, the level chosen for the standard would reflect a target chronic ANC value. The combination of the form of the standard, discussed above in section III.A.2, defined by the AAI equation and the assigned values of the F factors in the equation, other elements of the standard including the ambient air indicators (section III.A.1) and their averaging time (section III.A.3), and the level of the standard determines the allowable levels of NO_y and SO_X in the ambient air within each ecoregion. All of the elements of the standard together determine the degree of protection from adverse aquatic acidification effects associated with oxides of nitrogen and sulfur in the ambient air. The level of the standard plays a central role in determining the degree of protection provided and is discussed below.

Based on associations between pH levels and target ANC levels and

[11] Unlike other NAAQS, where the standard is met when the relevant value is at or below the level of the standard since a lower standard level is more protective, in this case a higher standard level is more protective.

between ANC levels and aquatic ecosystem effects, as well as consideration of episodic acidity, ecosystem response time, precedent uses of target ANC levels, and public welfare benefits, the PA concludes that consideration should be given to a range of standard AAI levels from 20 to 75 μeq/L. The available evidence indicates that target ANC levels below 20 μeq/L would be inadequate to protect against substantial ecological effects and potential catastrophic loss of ecosystem function in some sensitive aquatic ecosystems. While ecological effects occur at ANC levels below 50 μeq/L in some sensitive ecosystems, the degree and nature of those effects are less significant than at levels below 20 μeq/L. Levels at and above 50 μeq/L would be expected to provide additional protection, although uncertainties regarding the potential for additional protection from adverse ecological effects are much larger for target ANC levels above about 75 μeq/L, as effects are generally appreciably less sensitive to changes in ANC at such higher levels.

The PA recognizes that the level of the standard together with the other elements of the standard, including the ambient air indicators, averaging time, and form, determine the overall protectiveness of the standard. Thus, consideration of a standard level should reflect the strengths and limitations of the evidence and assessments as well as the inherent uncertainties in the development of each of the elements of the standard. The implications of considering alternative standards, defined in terms of alternative combinations of levels and percentile values that are a critical component of factor F1 in the form of the standard, are discussed in section III.E of the proposal and more fully in the PA.

5. Characterization of Uncertainties

The characterization of uncertainties is intended to address the relative confidence associated with the linked atmospheric-ecological effects system described above, and is described in detail in the PA (U.S. EPA, 2011, section 7.6 and Appendices F and G) and summarized in section III.F of the proposal. A brief overview of uncertainties is presented here in the context of the major structural components underlying the standard, as well as with regard to areas of relatively high uncertainty.

As discussed in the PA (U.S. EPA, 2011, Table 7–3), there is relatively low uncertainty with regard to the conceptual formulation of the overall structure of the AAI-based standard that incorporates the major associations linking biological effects to air concentrations. Based on the strength of the evidence that links species richness and mortality to water quality, the associations are strongly causal and without any obvious confounding influence. The strong association between the ecosystem indicator (ANC) and the causative water chemistry species (dissolved aluminum and hydrogen ion) reinforces the confidence in the linkage between deposition of nitrogen and sulfur and effects. This strong association between ANC and effects is supported by a sound mechanistic foundation between deposition and ANC. The same mechanistic strength holds true for the relationship between ambient air levels of nitrogen and sulfur and deposition, which completes the linkage from ambient air indicators through deposition to ecological effects.

There are much higher uncertainties, however, in considering and quantifying the specific elements within the structure of an AAI-based standard, including the deposition of SO_X, NO_y, and NH_X as well as the critical load-related component, each of which can vary within and across ecoregions. Overall system uncertainty with an AAI approach relates not just to the uncertainty in each element, but also to the combined uncertainties that result from linking these elements together within the AAI-based structure and over the defined spatial scale (i.e., ecoregions). Some of these elements—including, for example, dry deposition, pre-industrial base cation production, and reduced nitrogen deposition—are estimated with less confidence than other elements (U.S. EPA, 2011, Table 7.3). The uncertainties associated with all of these elements, and the combination of these elements through the AAI equation and over the ecoregion spatial scale, are summarized below.

The lack of observed dry deposition data, which affects confidence in the AAI on an ecoregion scale, is constrained in part by the lack of efficient measurement technologies. Progress in reducing uncertainties in dry deposition will depend on improved atmospheric concentration data and direct deposition flux measurements of the relevant suite of NO_y and SO_X species.

Pre-industrial base cation productivity by definition is not observable. Contemporary observations and inter-model comparisons are useful tools that help reduce the uncertainty in estimates of pre-industrial base cation productivity used in the AAI equation. In characterizing contemporary base cation flux using basic water quality measurements (i.e., major anion and cation species as defined in equation 2.11 in the PA), it is reasonable to assume that a major component of contemporary base cation flux is associated with pre-industrial weathering rates. To the extent that multiple models converge on similar solutions within and across ecoregions, greater confidence in estimating pre-industrial base cation production within the AAI and ecoregion frameworks would be achieved.

While characterization of NH_X deposition has been evolving over the last decade, the high uncertainty in characterizing NH_X deposition is due to both the lack of field measurements and the inherent complexity of characterizing NH_X with respect to source emissions and dry deposition.[12] Because ammonia emissions are generated through a combination of man-made and biological activities, and ammonia is semi-volatile, the ability to characterize spatial and temporal distributions of NH_X concentrations and deposition patterns is limited. While direct measurement of NH_X deposition is resource intensive because of the diffuse nature of sources (i.e., area-wide and non-point sources), there have been more frequent deposition flux studies, relative to other nitrogen species, that enable the estimation of both emissions and dry deposition. Also, while ammonia has a relatively high deposition velocity and traditionally was thought to deposit close to the emissions release areas, the semi-volatile nature of ammonia results in re-entrainment back into the lower boundary layer of the atmosphere resulting in a more dispersed concentration pattern exhibiting transport characteristics similar to longer lived atmospheric species. These inherent complexities in source characterization and ambient concentration patterns significantly increase the degree of uncertainty in NH_X deposition in general, and in the AAI equation applied on an ecoregion scale in particular. However, the PA notes that progress is being made in measuring ammonia with cost efficient samplers and anticipates the gradual evolution of a spatially robust ammonia sampling network that would help support analyses to reduce underlying uncertainties in NH_X deposition.

In characterizing uncertainties with respect to available measurement data and the use of ecological and

[12] Field measurements of NH_X have been extremely limited, but have begun to be enhanced through the NADP's passive ammonia network (AMoN).

atmospheric models, as summarized in sections III.F.2–3 of the proposal, the PA identified data gaps and model uncertainties in relative terms by comparing, for example, the relative richness of data between geographic areas or environmental media. As discussed in the proposal and more fully in the PA, from an uncertainty perspective, gaps in field measurement data increase uncertainties in modeled processes and in the specific application of such models. As noted above, processes that are embodied in an AAI-based standard are modeled using the CMAQ atmospheric model and steady-state ecological models. These models are characterized in the ISA as being well-established and have undergone extensive peer review. Nonetheless, the application of these models for purposes of specifying the factors in the AAI equation, on an ecoregion scale, is a new application that introduces uncertainties, especially in areas with limited observational data that can be used to evaluate this specific application. Understanding uncertainties in relevant modeled processes thus involves consideration of the uncertainties associated with applying each model as well as the combination of these uncertainties as the models are applied in combination within the AAI framework applied on an ecoregion scale.

Our confidence in improving critical load estimates can be increased by expanding water quality data bases used as inputs and evaluation metrics for critical load models. With regard to water quality data, the PA notes that such data are typically limited relative to air quality data sets, and are also relatively sparse in the western United States. While there are several state and local agency water quality data bases, it is unclear the extent to which differences in sampling, chemical analysis and reporting protocols would impact the use of such data for the purpose of better understanding the degree of protectiveness that would be afforded by an AAI-based standard within sensitive ecoregions across the country. In addition, our understanding of water quality in Alaska and Hawaii and the acid sensitivity of their ecoregions is particularly limited. Expanding the water quality data bases would enable clearer delineation of ecoregion representative critical loads in terms of the nth percentile. This would provide more refined characterization of the degree of protection afforded by a given standard. Longer term, the availability of water quality trend data (annual to monthly sampled) would support accountability assessments that examine if an ecoregion's response to air management efforts is as predicted by earlier model forecasting. The most obvious example is the long-term response of water quality ANC change to changes in calculated AAI, deposition, ambient NO_Y and SO_X concentrations, and emissions. In addition, water quality trends data provide a basis for evaluating and improving the parameterizations of processes in critical load models applied at the ecoregion scale related to nitrogen retention and base cation supply. A better understanding of soil processes, especially in the southern Appalachians, would enhance efforts to examine the variability within ecoregions of the soil-based adsorption and exchange processes which moderate the supply of major cations and anions to surface waters and strongly influence the response of surface water ANC to changes in deposition of nitrogen and sulfur.

Steady-state biogeochemical ecosystem modeling is used to develop critical load estimates that are incorporated in the AAI equation through factor F1. Consequently, the PA notes that an estimate of the temporal response of surface water ANC to deposition and air concentration changes is not directly available. Lacking a predicted temporal response impairs the ability to conduct accountability assessments down to the effects level. Accountability assessments would examine the response of each step in the emissions source through air concentration—deposition—surface water quality—biota continuum. The steady-state assumption at the ecosystem level does not impair accountability assessments through the air concentration/deposition range of that continuum. However, in using steady-state ecosystem modeling, several assumptions are made relative to the long-term importance of processes related to soil adsorption of major ions and ecosystem nitrogen dynamics. Because these models often were developed and applied in glaciated areas with relatively thin and organically rich soils, their applicability is relatively more uncertain in areas such as those in the non-glaciated clay-based soil regions of the central Appalachians. Consequently, it is desirable to develop the information bases to drive simple dynamic ecosystem models that incorporate more detailed treatment of subsurface processes, such as adsorption and exchange processes and sulfate absorption.

B. CASAC Views

The CASAC has advised the EPA concerning the ISA, the REA, and the PA. The CASAC supported the EPA's interpretation of the science embodied in the ISA and the assessment approaches and conclusions incorporated in the REA.

Most recently, CASAC considered the information in the final PA in providing its recommendations on the review of the new multi-pollutant standard developed in that document and discussed above (Russell and Samet, 2011a). In so doing, CASAC expressed general support for the conceptual framework of the standard based on the underlying scientific information, as well as for the conclusions in the PA with regard to indicators, averaging time, form and level of the standard that are appropriate for consideration by the Agency in reaching decisions on the review of the secondary NAAQS for oxides of nitrogen and sulfur:

> ''The final *Policy Assessment* clearly sets out the basis for the recommended ranges for each of the four elements (indicator, averaging time, level and form) of a potential NAAQS that uses ambient air indicators to address the combined effects of oxides of nitrogen and oxides of sulfur on aquatic ecosystems, primarily streams and lakes. As requested in our previous letters, the *Policy Assessment* also describes the implications of choosing specific combinations of elements and provides numerous maps and tabular estimates of the spatial extent and degree of severity of NAAQS exceedances expected to result from possible combinations of the elements of the standard.''
>
> ''We believe this final PA is appropriate for use in determining a secondary standard to help protect aquatic ecosystems from acidifying deposition of oxides of sulfur and nitrogen. The EPA staff has done a commendable job developing the innovative Aquatic Acidification Index (AAI), which provides a framework for a national standard based on ambient concentrations that also takes into account regional differences in sensitivities of ecosystems across the country to effects of acidifying deposition.''

(Russell and Samet, 2011a).

With respect to indicators, CASAC supported the use of SO_X and NO_y as ambient air indicators (discussed above in section III.A) and ANC as the ecological indicator (discussed above in section III.B.1). With respect to averaging time (discussed above in section III.C), CASAC agreed with the conclusions in the PA that ''an averaging time of three to five years for the AAI parameters is appropriate.'' CASAC noted that ''a longer averaging time would mask possible trends of AAI, while a shorter averaging time would make the AAI being more influenced by the conditions of the

particular years selected'' (Russell and Samet, 2011a).

With respect to the form of the standard (discussed above in section III.B), CASAC stated the following:

''EPA has developed the AAI, an innovative ''form'' of the NAAQS itself that incorporates the multi-pollutant, multi-media, environmentally modified, geographically variable nature of SO_X/NO_y deposition-related aquatic acidification effects. With the caveats noted below, CASAC believes that this form of the NAAQS as described in the final Policy Assessment is consistent with and directly reflective of current scientific understanding of effects of acidifying deposition on aquatic ecosystems.'' (Russell and Samet, 2011a)

''CASAC agrees that the spatial components of the form in the Policy Assessment are reasonable and that use of Omernik's ecoregions (Level III) is appropriate for a secondary NAAQS intended to protect the aquatic environment from acidification * * *''

(Russell and Samet, 2011a).

The caveats noted by CASAC include a recognition of the importance of continuing to evaluate the performance of the CMAQ and ecological models to account for model uncertainties and to make the model-dependent factors in the AAI more transparent. In addition, CASAC noted that the role of DOC and its effects on ANC would benefit from further refinement and clarification (Russell and Samet, 2011a). While CASAC expressed the view that the ''division of ecoregions into 'sensitive' and 'non-sensitive' subsets, with a more protective percentile applied to the sensitive areas, also seems reasonable'' (Russell and Samet, 2011a), CASAC also noted that there was the need for greater clarity in specifying how appropriate screening criteria would be applied in assigning ecoregions to these categories. Further, CASAC identified potential biases in critical load calculations and in the regional representativeness of available water chemistry data, leading to the observation that a given percentile of the distribution of estimated critical loads may be protective of a higher percentage of surface waters in some regions (Russell and Samet, 2011a). Such potential biases led CASAC to recommend that ''some attention be given to our residual concern that the available data may reflect the more sensitive water bodies and thus, the selection of the percentiles of waterbodies to be protected could be conservatively biased'' (Russell and Samet, 2011a).

With respect to level as well as the combination of level and form as they are presented as alternative standards (discussed above in sections III.D–E), CASAC agreed with the PA conclusions that consideration should be given to standard levels within the range of 20 and 75 μeq/L. CASAC also recognized that the level and the form of any AAI-based standard are so closely linked that these two elements should be considered together:

''When considered in isolation, it is difficult to evaluate the logic or implications of selecting from percentiles (70th to 90th) of the distribution of estimated critical loads for lakes in sensitive ecoregions to determine an acceptable amount of deposition for a given ecoregion. However, when these percentile ranges are combined with alternative levels within the staff-recommended ANC range of 20 to 75 microequivalents per liter (μeq/L), the results using the AAI point to the ecoregions across the country that would be expected to require additional protection from acidifying deposition. Reasonable choices were made in developing the form. The number of acid sensitive regions not likely to meet the standard will be affected both by choice of ANC level and the percentile of the distribution of critical loads for lakes to meet alternative ANC levels in each region. These combined recommendations provide the Administrator with a broad but reasonable range of minimally to substantially protective options for the standard.''

(Russell and Samet, 2011a).

CASAC also commented on the EPA's uncertainty analysis, and provided advice on areas requiring further clarification in the proposed rule and future research. The CASAC found it ''difficult to judge the adequacy of the uncertainty analysis performed by the EPA because of lack of details on data inputs and the methodology used, and lack of clarity in presentation'' (Russell and Samet, 2011a). In particular, CASAC identified the need for more thorough model evaluations of critical load and atmospheric modeling, recognizing the important role of models as they are incorporated in the form of the standard. In light of the innovative nature of the standard developed in the PA, CASAC identified ''a number of areas that should be the focus of further research'' (Russell and Samet, 2011a). While CASAC recognized that the EPA staff was able to address some of the issues in the PA, they also noted areas ''that would benefit from further study or consideration in potential revisions or modifications to the form of the standard.'' Such research areas include ''sulfur retention and mobilization in the soils, aluminum availability, soil versus water acidification and ecosystem recovery times.'' Further, CASAC encouraged future efforts to monitor individual ambient nitrogen species, which would help inform further CMAQ evaluations and the specification of model-derived elements in the AAI equation (Russell and Samet, 2011a).

C. Proposed Conclusions on Alternative Secondary Standards

As discussed in section III.H of the proposal, the Administrator considered whether it is appropriate at this time to set a new multi-pollutant standard to address deposition-related effects associated with oxides of nitrogen and sulfur, with a structure that would better reflect the available science regarding acidifying deposition to sensitive aquatic ecosystems. In so doing, she recognized that such a standard, for purposes of Section 109(b) and (d) of the CAA, must in her judgment be requisite to protect public welfare, such that it would be neither more nor less stringent than necessary for that purpose. In particular, she focused on the AAI-based standard developed in the PA and reviewed by CASAC, as discussed above. Based on consideration of the scientific basis for such a standard and the conclusions reached in the ISA, the Administrator agreed with the conclusion in the PA, and supported by CASAC, that there is a strong scientific basis for development of a standard with the general structure presented in the PA. She recognized that while the standard is innovative and unique, the structure of the standard is well-grounded in the science underlying the relationships between ambient concentrations of oxides of nitrogen and sulfur and the aquatic acidification related to deposition of nitrogen and sulfur associated with such ambient concentrations.

Nonetheless, the Administrator also recognized that such a standard would depend on atmospheric and ecological modeling, based on appropriate data, to specify the terms of an equation that incorporates the linkages between ambient concentrations, deposition, and aquatic acidification, for each separate ecoregion, and that there are a number of inherent uncertainties and complexities that are relevant to the question of whether it is appropriate under Section 109 of the CAA to set a specific AAI-based standard at this time. Based on her consideration of these important uncertainties and limitations, the Administrator recognized that in combination, these limitations and uncertainties result in a considerable degree of uncertainty as to how well the quantified elements of the AAI standard would predict the actual relationship between varying ambient concentrations of oxides of nitrogen and sulfur and steady-state ANC levels across the distribution of water bodies within the

various ecoregions in the United States. Because of this, there is considerable uncertainty as to the actual degree of protectiveness that such a standard would provide, especially for acid-sensitive ecoregions. The Administrator recognized that the AAI equation, with factors quantified in the ranges discussed above and described more fully in the PA, generally performs well in identifying areas of the country that are sensitive to such acidifying deposition and indicates, as expected, that lower ambient levels of oxides of nitrogen and sulfur would lead to higher calculated AAI values. However, the uncertainties discussed here are critical for determining the actual degree of protection that would be afforded such areas by any specific target ANC level and percentile of water bodies that would be chosen in setting a new AAI-based standard, and thus for determining an appropriate AAI-based standard that meets the requirements of Section 109.

The Administrator noted that setting a NAAQS generally involves consideration of the degree of uncertainties in the science and other information, such as gaps in the relevant data and, in this case, limitations in the evaluation of the application of relevant ecological and atmospheric models at an ecoregion scale. She noted that the issue here is not a question of uncertainties about the scientific soundness of the structure of the AAI, but instead uncertainties in the quantification and representativeness of the elements of the AAI as they vary in ecoregions across the country. At present, these uncertainties prevent an understanding of the degree of protectiveness that would be afforded to various ecoregions across the country by a new standard defined in terms of a specific nationwide target ANC level and a specific percentile of water bodies for acid-sensitive ecoregions and thus prevent identification of an appropriate standard.

The Administrator judged that the uncertainties are of such nature and magnitude that there is no reasoned way to choose a specific AAI-based standard, in terms of a specific nationwide target ANC level or percentile of water bodies that would appropriately account for the uncertainties, since neither the direction nor the magnitude of change from the target level and percentile that would otherwise be chosen can reasonably be ascertained at this time. Further, she noted that CASAC acknowledged that important uncertainties remain that would benefit from further study and data collection efforts, which might lead to potential revisions or modifications to the form of the standard developed in the PA, and that CASAC encouraged the Agency to engage in future monitoring and model evaluation efforts to help inform further development of the elements of an AAI-based standard. Based on these considerations the Administrator judged that the current limitations in relevant data and the uncertainties associated with specifying the elements of the AAI based on modeled factors are of such nature and degree as to prevent her from reaching a reasoned decision such that she is adequately confident as to what level and form (in terms of a selected percentile) of such a standard would provide any particular intended degree of protection of public welfare that the Administrator determined satisfied the requirements to set an appropriate standard under Section 109 of the CAA.

Based on the above considerations, the Administrator provisionally concluded that it is premature to set a new, multi-pollutant secondary standard for oxides of nitrogen and sulfur at this time, and as such she proposed not to set such a new secondary standard. Nonetheless, while the Administrator concluded that it is premature to set such a multi-pollutant standard at this time, she determined that the Agency should undertake a field pilot program to gather additional data (discussed below in section IV). She concluded that it is appropriate that such a program be undertaken before, rather than after, reaching a decision to set such a standard.

In reaching her proposed decision not to set a new AAI-based standard at this time, the Administrator recognized that the new NO_2 and SO_2 primary 1-hour standards set in 2010, while not ecologically relevant for a secondary standard, will nonetheless result in reductions in oxides of nitrogen and sulfur that will directionally benefit the environment by reducing NO_y and SO_X deposition to sensitive ecosystems. The Administrator proposed to revise the secondary standards by adding secondary standards identical to the NO_2 and SO_2 primary 1-hour standards set in 2010, including a 1-hour secondary NO_2 standard set at a level of 100 ppb and a 1-hour secondary SO_2 standard set at a level of 75 ppb. The EPA noted that while this will not add secondary standards of an ecologically relevant form to address deposition-related effects, it will provide additional protection for sensitive areas. The EPA further noted that this proposed decision is consistent with the view that the current secondary standards are neither sufficiently protective nor appropriate in form, but that it is not appropriate to propose to set a new, ecologically relevant multi-pollutant secondary standard at this time, for the reasons summarized above.

The EPA solicited comment on all aspects of this proposed decision, as discussed in the following section.

D. Comments on Alternative Secondary Standards

In this section, comments received on the proposal related to an AAI-based standard are discussed in section III.D.1 and comments related to the proposed decision to set 1-hour NO_2 and SO_2 secondary standards are discussed in section III.D.2.

1. Comments Related to an AAI-Based Standard

General comments that either supported or opposed the proposed decision not to set an AAI-based standard in this review are addressed in this section. Two groups of commenters offered sharply divergent views on whether it is appropriate for the EPA to set or even consider an AAI-based standard to protect against the effects in aquatic ecosystems from acidifying deposition associated with ambient concentrations of oxides of nitrogen and sulfur. These groups provided strongly contrasting views on the strength and limitations in the underlying scientific information upon which such a standard could be based, as well as on the legal authority and requirements in the CAA for the EPA to set such a standard. These comments are discussed below in section III.D.1.a, and build in part on the overarching issue raised by some commenters as to the EPA's authority under the CAA to include deposition-related effects within the scope of a NAAQS review, which is discussed above in section I.E. Some commenters also expressed views about specific aspects of an AAI-based approach, as discussed below in section III.D.1.b. More technical comments on specific elements and factors of the AAI are discussed in the Response to Comments document. General comments based on implementation-related factors that are not a permissible basis for considering an alternative standard are noted in the Response to Comments document.

a. Comments on Consideration of an AAI-Based Standard

The first group of commenters, including several industry groups (e.g., EPRI, UARG, and API), individual companies (e.g., East Kentucky Power Cooperative), and two states (TX, SD), strongly supported the EPA's proposed decision not to set an AAI-based

standard in this review. These commenters generally focused on the limitations and uncertainties in the scientific evidence used by the EPA as a basis for its consideration of an AAI-based standard, expressing the view that these limitations and uncertainties were so great as to preclude setting such a standard at this time. Several industry commenters felt the uncertainties were of sufficient magnitude as to invalidate the AAI approach for use in the NAAQS, while others agreed with the EPA's finding that further information and analysis is needed, and further noted that this work should be completed before the EPA could propose a new multi-pollutant standard. More fundamentally, some commenters in this group expressed the view that any consideration of such a standard is inconsistent with various provisions of the CAA and thus unlawful.

With regard to their views on the underlying scientific information, many of these commenters focused on what they asserted were areas of substantial uncertainty in the AAI approach including uncertainties in the individual F factors of the AAI, air deposition modeling, critical loads modeling, and available water quality and watershed data. Several commenters felt a more rigorous uncertainty and variability analysis of the AAI, beyond the analyses that the EPA presented in the PA, would be needed if the EPA were to consider such a standard in the future.

Some commenters expressed concerns with specific aspects of the AAI, such as the adequacy of the Omernik ecoregion approach as a method of waterbody aggregation for critical load calculations and whether ANC was an appropriate ecological indicator. The commenters asserted that the EPA needed to explore different methods for calculating critical loads, collect essential data, and employ mechanistic water chemistry models. The commenters also felt that the EPA was arbitrary in choosing its criteria for sensitive ecoregions and percent waterbodies, and that there was a bias in the field data toward sensitive areas. Several commenters felt a more comprehensive research program was needed to improve characterization of the biogeochemical and deposition processes incorporated into the AAI.

Some industry groups commented on uncertainties in the CMAQ modeling, including high levels of uncertainty surrounding measurement and modeling of chemically reduced forms of nitrogen (NH_x). Other commenters were also critical of the reliance of the AAI on modeling, and expressed the view that CMAQ would require intensive deposition-focused evaluation.

A second group of commenters, including several environmental groups (e.g., Center for Biological Diversity, Earthjustice, and Adirondack Council), the U.S. Department of Interior and the National Park Service, the New York Department of Environmental Conservation, and two tribes (Fond du Lac Band and Potawatomi) strongly disagreed with the EPA's proposed decision not to set an AAI-based standard in this review. These commenters generally focused on the strengths of the evidence of deposition-related effects, the extent to which analyses presented in the PA addressed uncertainties and limitations in the evidence, and on information regarding the adversity of such effects as a basis for their views that such a standard was warranted at this time. Many of these commenters pointed to CASAC's review of the underlying scientific evidence and its support for moving forward with an AAI-based standard at this time as support for their views.

In general, the environmental group commenters expressed the view that the current standards are clearly not adequate and that a combined NO_X/SO_X standard that links ambient air quality to an ecosystem indicator is appropriate, founded in science, and necessary for protection of public welfare. The commenters stated the current standards are neither sufficiently protective nor appropriate to address deposition-related effects. They also noted that the EPA has worked for decades to solve the acid deposition problem and that in their view the AAI represents an elegant solution to that problem.

With regard to their views on the underlying scientific information, these commenters generally agreed with the EPA's proposed conclusions that there are well-established water quality and biological indicators of aquatic deposition and well-established models that address air deposition, water quality impacts, and effects on biota. Many of these commenters expressed the view that the uncertainties and limitations in the scientific evidence were adequately addressed in the PA, which was reviewed by CASAC. Many of these commenters pointed to CASAC's support for adopting an AAI-based standard in this review while concurrently conducting additional field monitoring and longer-term research that might reduce uncertainties in future reviews of secondary NAAQS for oxides of nitrogen and sulfur.

Some governmental agency commenters were strongly supportive of an AAI-based standard and clearly felt such a standard should be adopted now. They also noted that the current ambient concentrations of NO_X and SO_X are causing adverse ecological impacts and they believe that ongoing damage due to acidic deposition and the risks to ecosystems far outweigh the risk of setting an AAI-based standard while some uncertainties remain. They assert that NO_X and SO_X deposition is causing adversity to public welfare and that the scientific uncertainties do not preclude setting an AAI-based standard, and point to CASAC as generally supporting this view. The commenters believe that the EPA has ample evidence to support a new ecologically based standard and that the AAI is reasonable and scientifically defensible. NY specifically recommended an AAI of 50 with some flexibility built into the F factors.

Some of these agency and environmental group commenters also referenced CASAC's support for specific elements of the AAI-based standard developed in the PA, including (1) The use of ANC as an appropriate ecological indicator for such a standard, (2) the use of NO_y and SO_X as well-justified indicators of atmospheric concentrations of oxides of nitrogen and sulfur, (3) the use of Omernik Level III ecoregions, (4) the division of ecoregions into sensitive and non-sensitive categories, (5) the use of a 3 to 5 year averaging time, and (6) the appropriateness of an AAI level between 20 to 75 μeq/L.

With regard to their views on the requirements of the CAA, several environmental group commenters stated that given the large body of evidence supporting significant ongoing harm to the public welfare and the EPA's finding the current standards are neither sufficiently protective nor appropriate to address deposition-related effects, the EPA's reliance on uncertainty as grounds for failing to propose protective standards is irrational, arbitrary, and legally flawed. They believe that the EPA cannot lawfully reject a new AAI-based standard while continuing to rely solely on a form of the standard that is inadequate and allows serious harms to the public welfare to continue. When confronted with scientific uncertainties and incomplete data, they feel the EPA must act in a precautionary manner that errs toward stronger protections. Further, they believe that the EPA's reliance on scientific uncertainty as a basis for its inaction is unsupportable in light of CASAC's advice and the EPA staff's conclusions in the ISA, REA and PA.

In addition to the two broad groups of commenters discussed above, a few other commenters offered more general

views on an AAI-based standard. For example, some state commenters (NC and PA) expressed support for the concept of developing a multi-pollutant, AAI-based standard, but felt that it would be important to gather additional information before proposing any such standard. One state organization (NESCAUM) expressed concern that the EPA was not following CASAC's recommendation to propose an ecologically relevant level and form for this NAAQS.

The EPA has carefully considered these comments on whether or not an AAI-based secondary standard for oxides of nitrogen and sulfur is appropriate at this time. The EPA agrees with the second group of commenters and CASAC's advice (outlined in section III.B) that there is a strong scientific basis for development of the structure of such a standard, specifically with regard to a standard that would provide protection from deposition-related aquatic acidification in sensitive ecosystems across the country. As discussed in section II.A and supported by several commenters, the available scientific evidence is sufficient to infer a causal relationship between acidifying deposition of nitrogen and sulfur and potential adverse effects to aquatic ecosystems, and that the deposition of oxides of nitrogen and sulfur both cause such acidification under current conditions that are allowed by the current secondary standards (U.S. EPA, 2008, chapter 3). The EPA agrees with commenters that there are well-established water quality and biological indicators of aquatic acidification as well as well-established models that address deposition, water quality, and effects on ecosystem biota, and that ecosystem sensitivity to acidification varies across the country (U.S. EPA, 2011, chapter 7).

The EPA also agrees with the second group of commenters and CASAC that ANC would be an appropriate ecological indicator, reflecting the acidifying effects of deposition of nitrogen and sulfur (U.S. EPA, 2011, chapter 7.2 and Russell and Samet, 2011a). Further, the EPA agrees that the structure of an AAI-based standard is well-grounded in science and would address the combined effects of deposition from oxides of nitrogen and sulfur by characterizing the linkages between ambient concentrations, deposition, and aquatic acidification, and that the structure of the standard takes into account relevant variations in these linkages across the country (section III.B. above and U.S. EPA, 2011, chapter 7).

The EPA disagrees with the first group of commenters that the use of Omernik ecoregions would be inadequate. A full explanation of the EPA's rationale for selecting the Omernik ecoregion scheme for spatial aggregation is found in section 7.2.5 of the PA. Omernik ecoregions include consideration of geology, physiology, vegetation, climate, soils, land use, wildlife, and hydrology. These factors also relate well to sensitivity to acidification. The EPA also evaluated the National Ecological Observatory Network (NEON) and Bailey's ecoregions developed for the U.S. Forest Service and concluded that the Omernik ecoregion classification would be the most appropriate for an AAI-based standard. It offers several levels of spatial delineation, has undergone extensive scientific peer review, and has explicitly been applied to delineating acid sensitive areas of the U.S.

Nonetheless, the EPA agrees with the first group of commenters that there are important and significant remaining scientific uncertainties within the derivation of the AAI, with the data used to specify the factors within the AAI equation, and with the models themselves. These uncertainties are more fully discussed in Appendix F and G of the PA and in section III.A.5 above. These uncertainties have been reviewed by CASAC, and the EPA recognizes that further research would help to reduce the uncertainties. In general, the EPA also recognizes that the AAI would depend on atmospheric and ecological modeling, with inherent uncertainties, to specify the terms of an AAI equation that incorporate the linkages between ambient concentrations, deposition, and aquatic acidification.

The EPA agrees with the first group of commenters that there are several important limitations in the available data upon which elements of the AAI are based (U.S. EPA, 2011, Chapter 7). For example, existing monitors for NO_y are generally not located in areas that are representative of sensitive aquatic ecosystems, and there is relatively sparse water quality data coverage in sensitive mountainous western areas. Further, even in areas where relevant data are available, small sample sizes impede efforts to characterize the representativeness of the available data for some ecoregions, which was noted by CASAC as being of particular concern (Russell and Samet, 2011a). Also, measurements of reduced forms of nitrogen are available from only a small number of monitoring sites, and emission inventories for reduced forms of nitrogen used in atmospheric modeling are subject to a high degree of uncertainty.

The EPA agrees with the first group of commenters that uncertainties related to the use of ecological and atmospheric models are difficult to evaluate due to a lack of relevant observational data. For example, relatively large uncertainties are introduced by a lack of data with regard to pre-industrial environmental conditions and other parameters that are necessary inputs to critical load models that are the basis for factor F1 in the AAI equation. Also, observational data are not generally available to evaluate the modeled relationships between nitrogen and sulfur in the ambient air and associated deposition, which are the basis for the other factors (i.e., F2, F3, and F4) in the AAI equation. The EPA recognizes that, in contrast, such model-related uncertainties are not relevant in the consideration of other NAAQS since those NAAQS are not defined in terms of factors based on such models.

The EPA agrees that these data limitations and model uncertainties create a number of inherent uncertainties and complexities in the quantification of the F factors of the AAI and the representativeness of the F factors at an ecoregion scale (U.S. EPA, 2011, Appendix F). These uncertainties and complexities currently lead to a high degree of uncertainty in characterizing the degree of protectiveness that would be afforded by an AAI-based standard with quantified F factors derived as discussed above, within the ranges of levels and forms identified in section III.A above.

The EPA disagrees with the first set of commenters that the selection of sensitive ecoregions and percentile waterbodies would be arbitrary. The EPA fully discussed its rationale and selection of sensitive ecoregions and the range of percentiles used in section 7.2.5 of the PA. The EPA relied on available alkalinity and ANC data to draw distinctions between sensitive and non-sensitive ecoregions. The EPA used its judgment in selecting the range of percentiles for sensitive and non-sensitive ecoregions, attempting to be neither over-protective nor under-protective of the set of waterbodies in each ecoregion.

In general, the first set of commenters tends to treat all aspects of the AAI as subject to a high to very high degree of uncertainty. The EPA disagrees with this view, and instead views some parts of the AAI as based on more certain scientific information than others. For example, the EPA believes there is a solid scientific basis for the general

framework of the AAI and for the relationship between ANC and effects on aquatic life. There is a strong basis for selection of ANC as an ecological indicator, for selection of NO_y and SO_X as ambient air indicators, for selection of the annual and 3- to 5-year averaging time frame, and for selection of the range of ANC and percentile of water bodies for consideration. Likewise, the EPA believes there is a solid scientific basis for selection of Omernik ecoregions as the geographic basis for development of the AAI F factors. The EPA believes that for many areas there is a strong basis for determining whether an ecoregion is acid sensitive or not acid sensitive, while recognizing there is some uncertainty in some areas as to which category the area should fall in. The EPA's decision not to adopt an AAI-based standard at this time is not driven by uncertainty in these elements of the AAI, but instead in the elements needed to derive the quantified F factors for ecoregions across the country and our ability to evaluate the representativeness of those F factors for an entire ecoregion. The greatest uncertainties concern the F1 and F2 factors, which relate to development of a single critical load to represent a specified percentile of all of the waterbodies in an ecoregion and development of the value for deposition of reduced nitrogen. In addition, there are also important and significant uncertainties related to development of the F3 and F4 factors, which concern the quantified relationship between ambient levels of NO_y and SO_X and deposition rates of nitrogen and sulfur. The bases for these uncertainties are discussed in more detail in sections III.A.5 above and are considered as well in section III.E below. Thus, while the EPA agrees in part with the first group of commenters, in general they paint with too broad a brush. The EPA's decision is based instead on taking into account the areas where there is less scientific uncertainty as well as the areas where there remain significant scientific uncertainties.

In general, the second set of commenters does not contest the scientific evidence as discussed by the EPA or the scientific conclusions the EPA draws. They do not contest the existence of scientific uncertainty or the causes of it, and do not present scientific or technical arguments to contest the nature or magnitude of the uncertainty. Instead, they disagree with the conclusions or judgments to draw from the uncertainty. In the view of these commenters, the degree of uncertainty is low enough to warrant setting an AAI standard at this time. They disagree with the Administrator's policy judgment that the nature and magnitude of uncertainty is of such significance that it warrants not setting an AAI standard at this time. Their primary disagreement is with this judgment, not with the EPA's underlying views on the science and its uncertainties. As discussed in the proposal and below, however, the Administrator's reasoned judgment is that it is not appropriate to establish an AAI-based secondary standard at this time. The uncertainties discussed above prevent a reasoned understanding of the degree of protectiveness that would be afforded to various ecoregions across the country by a new standard defined in terms of a specific nationwide target ANC level and a specific percentile of water bodies for acid-sensitive ecoregions. Therefore, the Administrator is unable to identify an appropriate standard.

The EPA recognizes that the AAI equation, with factors quantified in the ranges discussed in section III.A above and described more fully in chapter 7 of the PA, generally performs well in identifying areas of the country that are sensitive to such acidifying deposition and indicates, as expected, that lower ambient levels of oxides of nitrogen and sulfur would lead to higher calculated AAI values (PA, chapter 7). However, the various uncertainties discussed above are critical for determining with any degree of confidence the actual degree of protection that would be afforded such areas by any specific target ANC level and percentile of water bodies that would be chosen in setting a new AAI-based standard with quantified F factors, and thus for determining an appropriate AAI-based standard that meets the requirements of Section 109 of the CAA. The EPA recognizes that these limitations and uncertainties result in a high degree of uncertainty as to how well the quantified elements of the AAI standard would predict the actual relationship between varying ambient concentrations of oxides of nitrogen and sulfur and steady-state ANC levels across the distribution of water bodies within the various ecoregions in the United States. Because of this, there is a high degree of uncertainty as to the actual degree of protectiveness that such a standard would provide, especially for acid-sensitive ecoregions.

With regard to comments that the EPA cannot lawfully reject a new AAI-based standard, the EPA disagrees with the second group of commenters that the Administrator is required to set an AAI-based standard at this time. Although the Administrator has concluded that the current secondary standards are neither appropriate nor adequate to protect against potentially adverse deposition-related effects associated with ambient concentrations of oxides of nitrogen and sulfur, such a conclusion does not require the EPA to adopt a new NAAQS where the Administrator cannot reasonably judge that it would meet the criteria for a secondary NAAQS.

The Administrator judges that the current limitations in relevant data and the uncertainties associated with specifying the elements of a new AAI-based NAAQS defined in terms of modeled factors are of such a significant nature and degree as to prevent her from reaching a reasoned decision as to what level and form (in terms of a selected percentile) of such a standard would provide any particular intended degree of protection of public welfare that the Administrator determined satisfied the requirements to set an appropriate standard under Section 109 of the CAA. As a result, the Administrator has determined that she cannot establish an AAI-based standard that is requisite to protect public welfare. The Administrator has made a similar judgment in deciding not to adopt new secondary NAAQS in the form of 1-hour standards identical to the primary NO_2 and SO_2 standards, as discussed below. No other NAAQS revisions to address the effects of acid deposition associated with oxides of nitrogen and sulfur in the ambient air have been suggested or considered by the EPA, CASAC, or commenters in this review.[13] As such, all possible revisions to the secondary NAAQS to address the effects of acid deposition would involve adoption of new secondary standards that are judged by the Administrator to have such a high degree of uncertainty that she cannot make a reasoned decision that a new standard would satisfy the criteria of Section 109(b) of the CAA.

Commenters have pointed to the requirement in Section 109(b)(2) of the CAA that any secondary NAAQS ''must specify a level of air quality the attainment and maintenance of which * * * is requisite to protect the public welfare from any know or anticipated adverse effects * * *'' in support of the argument that the EPA must adopt a new standard that provides requisite protection, having concluded that the

[13] No one has suggested that the EPA should revise the current 3-hour or annual secondary standards to address the effects of acidifying deposition associated with oxides of nitrogen and sulfur in the ambient air. All revisions under consideration have involved adopting new secondary NAAQS.

current secondary standards are not sufficient to protect against adverse effects. In considering this comment, the EPA has taken into account the statutory language, as well as the bases for the EPA's conclusion that the current standards for oxides of nitrogen and sulfur are neither appropriate nor adequate to provide protection against potentially adverse deposition-related effects and the data and model uncertainties that limit our efforts to characterize the degree of protectiveness that would be afforded by either an AAI-based standard or a 1-hour standard. We have concluded that Section 109 of the CAA does not require the EPA to adopt a new secondary standard where, as here, in the reasoned judgment of the Administrator, the uncertainties associated with such a standard are of such significance that they prevent her from determining whether or not such a NAAQS is requisite to protect public welfare. Section 109(b) of the CAA does not require the EPA to set a new standard under circumstances where the Administrator cannot reasonably judge that it would meet the criteria for a secondary NAAQS.

This is consistent with the decision by the Supreme Court in *Massachusetts* v. *EPA,* 549 U.S. 497 (2007), which concerned the EPA's authority under Section 202(a) of the CAA. There the Supreme Court determined that scientific uncertainty that ''is so profound that it precludes the EPA from making a reasoned judgment'' concerning endangerment to public health and welfare from air pollution would justify the EPA not making a finding on endangerment. Id at 534. The Court noted that ''[t]he statutory question is whether sufficient information exists to make'' an endangerment finding. Id. In this review, the scientific uncertainty is of such a significant nature and degree that sufficient information does not exist for the EPA to make a reasoned judgment as to whether a new secondary standard addressing aquatic acidification would satisfy the criteria of Section 109(b). As such, adding a new AAI secondary standard at this time would not ''be appropriate under [Section 109(b)].'' CAA Section 109(d)(1).

The EPA recognizes and agrees with the comment from one environmental group that the EPA is not ''foreclosed from setting a standard unless it can identify * * * a 'perfect' standard level that is free from any noteworthy uncertainty.'' However, that is not the situation in this rulemaking. The Agency has concluded that it would not be appropriate to promulgate a standard to address the public welfare effects of acidifying deposition where the remaining scientific uncertainties are of such significance that they preclude the EPA from making a reasoned determination of the degree of protectiveness that would be afforded by such a standard. The EPA recognizes that as a result of not setting a new secondary standard the current secondary standards continue in place and continue to be neither appropriate nor adequate to protect against potentially adverse deposition-related effects associated with ambient concentrations of oxides of nitrogen and sulfur. However, in the Administrator's view the proper response under the current circumstances is to continue to develop the scientific and technical basis for a future revision to the standards, and not to adopt at this time a new secondary standard that she cannot reasonably judge would comply with Section 109 of the CAA.

Further, the EPA agrees with both groups of commenters and CASAC that collecting further field data would be beneficial. A field pilot program is discussed in detail in section IV below. However, the EPA disagrees with the first group of commenters' assertions that these uncertainties should invalidate or preclude the further development of an AAI-based standard.

b. Comments on Specific Aspects of an AAI-Based Approach

This section discusses comments on the following four specific aspects of an AAI-based approach to setting a secondary standard for oxides of nitrogen and sulfur: (1) The inclusion of chemically reduced nitrogen (NH_X), in addition to oxides of nitrogen, in the AAI equation; (2) whether such a standard would be appropriately construed as a national standard versus a regional standard; (3) whether such a standard would be appropriately construed as an ambient air quality standard versus a water quality standard, and (4) whether the EPA has authority under the CAA to set a multi-pollutant NAAQS.

(1) As described above in section III.A, the AAI equation contains a separate factor that accounts for the acidifying potential of NH_X, in addition to the factor that accounts for the acidifying potential of oxides of nitrogen. Several industry commenters addressed this issue explicitly, with some expressing the view that NH_X should be treated the same as NO_X in the AAI, while others felt it should not be included at all in the AAI. Several commenters expressed the view that accounting for NH_X in the AAI equation represents a *de facto* regulation of ammonia, which they assert is unlawful since reduced nitrogen is not a listed air pollutant under Section 108 of the CAA.

Other commenters, including environmental groups and governmental agency commenters, did not explicitly comment on the inclusion of NH_X in the AAI equation; however several commenters made note of CASAC's advice on this issue. CASAC advised that it is necessary to include a factor for NH_X in the AAI equation, even though it is not a listed pollutant, since aquatic ecosystems respond to inputs of NH_X to create acidity just like they do with inputs of NO_X and SO_X.

The EPA has included NH_X deposition explicitly as part of factor F2 in the AAI expression to account for the acidifying potential afforded by ammonia gas and ammonium ion. Inclusion of NH_X deposition, in addition to deposition of oxides of nitrogen, is necessary to account for potential effects of all reactive nitrogen species which, in turn, allows for determining the contributions of oxides of N and S to aquatic acidification. This approach is consistent with the requirement in the CAA that where the state of the science provides a basis for considering such effects, the review of the air quality criteria for a pollutant should encompass the ways in which other air pollutants may interact with the criteria pollutant to produce adverse effects. See CAA Section 108(a)(2). In effect, the inclusion of NH_X deposition can be viewed as a necessary component consistent with our scientific understanding that links deposition of all nitrogen species to ecological effects.

The EPA recognizes that the NAAQS is established to address the pollutants oxides of nitrogen and oxides of sulfur. Consequently, the ambient concentrations of oxides of sulfur (as SO_X) and nitrogen (as NO_y) are accounted for separately from the deposition of NH_X in the AAI equation, thus defining the standard specifically in terms of the acidifying potential of levels of oxides of nitrogen and sulfur in the ambient air. More specifically, compliance with an AAI-based standard would be based on using federal reference or equivalent monitoring methods to measure ambient concentrations of NO_y and SO_X to determine an area's attainment status. Conversely, there would be no requirement to measure concentrations of NH_X to determine compliance with an AAI-based standard. Rather, ecoregion-specific values of NH_X deposition would be determined by modeling and would be specified by the EPA in conjunction with setting such a

standard, and would not be a variable in the AAI equation as would SO_X and NO_y. The contribution of reduced forms of nitrogen to total nitrogen deposition would represent an ecosystem-specific environmental factor that plays a necessary background role in characterizing the relationship between the measured, variable levels of the ambient air indicators of oxides of nitrogen and sulfur (NO_y and SO_X) and the associated degree of aquatic acidification. Section 108 requires the air quality criteria to evaluate to the extent practicable the variable factors such as atmospheric conditions that affect the impact of the ambient air pollutant (in this case oxides of nitrogen and sulfur) on the public welfare. In this review, such variable factors include the deposition of reduced nitrogen in an ecoregion, as well as all of the other elements reflected in the factors F1 to F4, and the designation of an area as acid-sensitive or not acid-sensitive. Section 109 calls for the EPA to base the NAAQS on the air quality criteria, and accounting for the role of reduced nitrogen deposition in the AAI reflects this.

In considering this aspect of an AAI-based standard, the EPA took into account that in applying the AAI equation, all factors, including NH_X deposition, would be updated as appropriate as part of the periodic reviews of the NAAQS, called for at five-year intervals by the CAA, to account for changing environmental conditions and new data. In determining an ecoregion's status with regard to meeting a particular AAI-based standard, NH_X deposition reflected in the F2 factor would be treated just as all of the other environmental terms—e.g. critical loads and transference ratios—which influence factors F1, F3 and F4. To the extent that changes in NH_X deposition occur from one review to the next, the ecoregion-specific F2 factors would be updated to reflect such changes. To the extent that NH_X deposition decreased from one review to the next, an AAI-based standard updated during a periodic review to reflect this change would allow for potentially higher levels of NO_y and SO_X that would meet a specific AAI-based standard; conversely, increased levels of NH_X deposition would allow for potentially lower levels of NO_y and SO_X. Meeting a specific AAI-based standard would only require that the combined levels of NO_y and SO_X be such that a calculated AAI value meet or exceed the AAI value set as the level of the standard. Consequently, while the contribution of NH_X deposition would be accounted for, NH_X emissions would not be regulated through the implementation of an AAI-based standard. NH_X deposition would be treated as an ecologically relevant background value that could be updated over time to reflect changes in circumstances, but accounting for such changes would not be required for purposes of determining compliance with an AAI-based standard. Thus, the incorporation of NH_X in the AAI equation would not result in *de facto* regulation of NH_X emissions.

(2) Some commenters raised the issue of whether an AAI-based standard would be a national standard, as required by Section 109 of the CAA, or whether it is in essence a regional standard. One group of commenters (the Center for Biological Diversity and the National Park Service) generally expressed the view that an AAI-based standard would be a national standard, whereas another group, including industry commenters, asserted that an AAI-based standard would be a regional standard and thus not consistent with the requirements of the CAA.

The first group of commenters supported the use of a national ANC indicator, recognizing that an AAI approach would account for regional differences in sensitivity and relevant environmental factors while providing a nationally consistent degree of protection across sensitive ecoregions. For example, the National Park Service stated that the AAI approach provides a uniform level of protection to sensitive ecosystems while appropriately taking into account the variability in deposition, meteorology, and other relevant environmental factors across ecoregions.

The second group of commenters noted that application of the AAI equation in different areas of the country produced different allowable concentrations of NO_y and SO_X, asserting as a result that an AAI-based standard would be a regional standard. These commenters asserted that the EPA lacks authority under the CAA to set such a regional NAAQS. For example, UARG states that the AAI is applied differently in different regions of the country (e.g., sensitive vs. non-sensitive ecoregions). The Alliance of Automobile Manufacturers commented that both the EPA and Congress historically have decided that secondary national air quality standards are not an appropriate approach to address regionally variable welfare effects.

The EPA believes that a secondary NAAQS based on the AAI approach could be a national standard, consistent with the CAA. An AAI-based standard would apply all across the country. It would be defined in part by a single level of the AAI—that is, every part of the country would be expected to meet or exceed a specified AAI level. The scientific basis for setting a national AAI level is rooted in the similarity between AAI and acid neutralizing capacity (ANC), which is a widely accepted ecological health indicator for aquatic acidification. The rationale underlying the use of ANC is that the ecosystem health reflected by an ANC value in one part of the country is generally similar to that in another location, irrespective of regional differences in biogeochemistry and atmospheric conditions. The EPA recognizes that allowable concentrations of the ambient air pollutant indicators for oxides of nitrogen and sulfur in the AAI equation can vary from one location to another and result in the same calculated AAI. The difference between an AAI-based standard and the existing primary standards is that the level of the standard is defined directly in terms of the measured ambient air pollutant indicator. That is, the health-based indicator and the measured ambient air indicator are based on the same chemical entity. In an AAI-based standard, the level of the standard, reflecting a nationally consistent degree of protection, would be defined in terms of an ecological indicator, ANC, and compliance would be determined based on concentrations of the ambient air indicators, NO_y and SO_X. From an ecosystem health perspective, it is most relevant to use the ecological indicator, ANC, to establish a single level that, in the context of an AAI, leads to a similar degree of protection across the country. The allowable levels of NO_y and SO_X could vary across the country, while the specified AAI level and the corresponding degree of protection, would not. This would facilitate ensuring that such a NAAQS would provide sufficient protection, but not more than was necessary. It should be noted that in the 2006 PM NAAQS decision the EPA set a NAAQS that envisions variation in allowable ambient levels of certain kinds of PM. The EPA set a PM_{10} standard with a single numerical level, which then allowed varying levels of coarse PM, a subset of PM_{10}. The PM_{10} standard was designed to allow lower levels of coarse PM in urban areas and higher levels of coarse PM in non-urban, rural areas. The EPA's goal was to target protection at urban areas, where the evidence showed coarse particles presented a greater risk to public health. The single numerical standard for PM_{10} allowed

variable levels of coarse PM, with higher allowable levels where there was less evidence of risk and lower allowable levels where the evidence of risk was greater. This approach was upheld in *American Farm Bur. Fed.* v. *EPA,* 559 F.3d 512, 533–536 (D.C. Cir. 2009).

In conjunction with consideration of an AAI-based standard, the EPA has recognized that the nation includes some relatively acid-sensitive and some relatively non-acid sensitive ecoregions. This delineation allows for an appropriate application of the AAI equation that increases its relevancy from a national perspective as it avoids creating more than requisite protection in areas that are not acid sensitive. The AAI equation and the selected level of such a standard would be applicable everywhere; however, factors in the AAI equation are appropriately dependent on the sensitive and non-sensitive ecoregion classification. Therefore, the delineation of sensitive and non-sensitive regions allows for a nationally consistent application of the AAI equation as it targets protection on those areas most likely to benefit from reductions in acidifying deposition of oxides of nitrogen and sulfur, and avoids more than requisite protection in areas that would not benefit from such reductions.

(3) Some commenters expressed the view that an AAI-based standard would essentially be a water quality standard, since it would use ANC, a water quality property, as the ecological indicator. For example, UARG expressed this view by noting that an AAI standard would be defined in terms of a single water quality level with multiple allowable air quality concentrations of oxides of nitrogen and sulfur.

The EPA notes that the AAI relates aquatic acidification to ambient air concentrations of oxides of nitrogen and sulfur. An AAI-based standard would be set at a level such that ambient air concentrations would not cause harmful acidification effects to water quality resources, which is within the scope of welfare effects that secondary NAAQS are to address (i.e., welfare effects include, but are not limited to, ''effects on soils, water, * * *''). Accordingly, while an AAI-based standard would address effects on water quality, it would do so by defining the allowable ambient air concentrations of oxides of nitrogen and sulfur that would provide appropriate protection against such effects. Compliance with such a standard would be determined by measuring ambient air concentrations of NO_y and SO_X, not by measuring the water quality property of ANC. The actual water quality of any body of water would not be used to determine compliance with the air quality standard, and no body of water would be considered in ''non-compliance'' with an AAI air quality standard. Thus, an AAI-based standard is appropriately construed as an air quality standard, not a water quality standard.

(4) Some commenters questioned whether the EPA has the authority to establish a NAAQS that jointly addresses ambient concentrations of oxides of nitrogen and oxides of sulfur. Pointing to language in Section 109(b)(2) that a NAAQS must address ''adverse effects associated with the presence of *such air pollutant* in the ambient air,'' these commenters took the position that the EPA may not allow for tradeoffs between two pollutants in setting a NAAQS. See Section 109(b)(2) (emphasis added). These commenters suggest the NAAQS must be set for ''such air pollutant'' only. The EPA disagrees that the phrase ''such air pollutant'' in Section 109(b)(2) would prohibit the Agency from setting a multi-pollutant NAAQS in the form of an AAI. When the Administrator sets a NAAQS, the standard must be ''requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant.'' CAA Section 109(b)(2). Oxides of nitrogen and sulfur, pollutants for which the EPA has issued air quality criteria, both cause acidification of aquatic ecosystems, effects that could be considered adverse to public welfare. As such, acidifying deposition is a ''known or anticipated adverse effect[ ] associated with the presence of [oxides of nitrogen] in the ambient air.'' This known or anticipated adverse effect is also associated with the presence of oxides of sulfur in the ambient air. Given the scientific links between ambient air concentrations of oxides of nitrogen and sulfur, the related deposition of nitrogen and sulfur, and the associated ecological responses, the EPA appropriately considered a multi-pollutant NAAQS in the form of an AAI to protect against the effects of acidifying deposition to aquatic ecosystems that took into account these linkages. Rather than limiting the EPA's authority, the language cited by the commenters goes to the breadth of the EPA's obligation and authority to set standards to protect against ''any known or anticipated adverse effects.'' In addition, the NAAQS are to be based on the air quality criteria, which under Section 108(a)(2) are required to consider the kind of multi-pollutant linkage evident in this review. The EPA does not read the language of Section 109(b) as prohibiting the Administrator from setting a multi-pollutant NAAQS such as the AAI where such an approach would be judged as the appropriate way to satisfy Section 109(b)'s requirements for each of the pollutants involved.

2. Comments on 1-Hour NO_2 and SO_2 Secondary Standards

Comments received on the proposal related to setting new 1-hour NO_2 and SO_2 secondary standards are addressed in this section. Most generally, there was broad and strong opposition to the EPA's proposed decision to set 1-hour NO_2 and SO_2 secondary standards identical to the 1-hour NO_2 and SO_2 primary standards. For example, strong opposition to this proposed decision was expressed by a diverse set of commenters, including some environmental groups (e.g., Environmental Justice, the Adirondack Council) and industry groups (e.g., UARG, AAM, ASARCO, API, Portland Cement Association, Tri-State Generation and Transmission Association, Louisiana Chemical Association, East Kentucky Power Cooperative, FMMI, Rio Tinto), the U.S. Department of the Interior, and some states (e.g., NY, PA, TX). These commenters offered various arguments in support of their views that the proposed decision is unlawful, arbitrary, and not supported by the record of this rulemaking, as outlined below. One commenter (NC) supported setting secondary standards identical to the 1-hour NO_2 and SO_2 primary standards, while also supporting the EPA's decision to take additional time to develop a multi-pollutant AAI-based secondary standard. Another commenter (SD) simply supported setting secondary standards that are no more stringent than the primary standards.

In proposing the 1-hour secondary standards, the EPA recognized that such standards would not be ecologically relevant, but concluded that they would nonetheless ''directionally provide some degree of additional protection'' by reducing deposition to sensitive ecosystems. The EPA also noted that this was consistent with the view that the current secondary standards are neither sufficiently protective nor appropriate in form, but that it is not appropriate to propose to set a new, ecologically relevant multi-pollutant secondary standard at this time.

In arguing that the proposed decision to set 1-hour NO_2 and SO_2 secondary standards identical to the 1-hour NO_2 and SO_2 primary standards is unlawful, commenters asserted that the EPA's

rationale is not consistent with the requirements of Section 109 of the CAA. Commenters argue that this rationale is not consistent with the CAA requirement that the EPA set secondary NAAQS that are ''requisite to protect public welfare;'' that is, a standard that is neither more nor less stringent than necessary for this purpose. More specifically, these commenters argue that a standard that is based solely on ''directionally'' improving the environment, without any evidence or judgment that it would provide ''requisite'' protection, is not consistent with the requirements of the CAA and is thus unlawful. Some commenters also note that the CAA requires that the EPA revise previously adopted NAAQS as ''appropriate'' to provide such protection. These commenters assert that since the EPA's proposal concludes that the 1-hour NO_2 and SO_2 standards are not ecologically relevant to address deposition-related effects on sensitive ecosystems, adding such standards cannot be considered to be an appropriate revision to the NAAQS for the purpose of addressing adverse ecological effects.

Commenters also raised a number of issues in support of their views that the proposed decision is arbitrary and unsupported by the available information in the record of this rulemaking. Some commenters noted that there is no evidence or analysis in the record that addresses the degree of protection that would likely be afforded by 1-hour NO_2 and SO_2 standards, and, further, that the EPA does not claim otherwise. In the absence of such information, commenters argue that the EPA cannot make a reasoned judgment as to what levels of such 1-hour NO_2 and SO_2 standards would be requisite to protect public welfare; in particular, some commenters emphasized that the EPA cannot demonstrate that such standards would not be more stringent than necessary to protect against adverse deposition-related effects to sensitive ecosystems. Thus, in the commenters' view, any such 1-hour standards would be arbitrary.

One commenter also expressed the view that the EPA's proposed decision to set new 1-hour NO_2 and SO_2 secondary standards is inconsistent with the reasoning the EPA used as a basis for proposing not to set a new ecologically relevant AAI-based secondary standard at this time. As summarized above, the EPA based its proposed decision not to set an AAI-based standard, which is expressly designed to address important differences in ecosystem sensitivities, in part on uncertainties and limitations in relevant information that were of such nature and degree as to prevent the Administrator from reaching a reasoned decision at this time as to what level and form of such a standard would provide a particular degree of protection. This commenter asserts that the proposed decision to set new 1-hour NO_2 and SO_2 secondary standards completely ignores such uncertainties inherent in 1-hour standards, which are not even structured to account for differences in ecosystem sensitivities.

Some commenters asserted not only that the EPA has failed to provide any information on the degree of protection that would likely be afforded by the proposed 1-hour NO_2 and SO_2 standards, but that such an analysis cannot be done since there is no rational connection between any of the elements of the proposed 1-hour secondary standards—including the averaging time and level—and the ecological effects the proposed standards are intended to address. In particular, commenters noted that EPA has not presented any rational basis for concluding that standards designed to reduce human health risks associated with short-term peak concentrations of NO_2 and SO_2 have any connection whatsoever to addressing long-term deposition of oxides of nitrogen and sulfur and associated impacts on sensitive ecosystems.

Further, commenters argued that there is no evidence in the record that demonstrates the proposed 1-hour secondary standards would provide any environmental benefit. For example, commenters noted that such standards do not take into account ecosystem sensitivity; they may not result in reductions to long-term deposition that is the relevant time frame for deposition-related effects on sensitive ecosystems; and they would not provide any benefit beyond that which might accrue from the identical primary standards that are already in effect. Some commenters have also noted that many other environmental regulations are already in place that will provide reductions in ambient oxides of nitrogen and sulfur, and that the EPA has not demonstrated that any additional reductions are needed to provide requisite protection.

The EPA agrees that the Agency has not presented evidence or analysis in the record that addresses the degree of protection that would likely be afforded by secondary standards set identical to the current 1-hour NO_2 and SO_2 primary standards. The EPA further agrees that such an analysis cannot reasonably be done in the absence of a demonstrable linkage between peak 1-hour average concentrations of NO_2 and SO_2 in the ambient air and the impact of deposition-related acidification associated with oxides of nitrogen and sulfur on sensitive aquatic ecosystems that the proposed standards were intended to address. As a result, the EPA agrees that there is no factual basis to make a reasoned judgment as to what levels of 1-hour NO_2 and SO_2 standards would provide a desired degree of protection of the public welfare, such that the EPA cannot demonstrate or judge that the proposed standards would not be more or less stringent than necessary to provide the desired degree of protection against potentially adverse deposition-related effects to sensitive ecosystems.

As to whether the proposed standards would provide any environmental benefit, it is the EPA's view that it is reasonable to conclude that any standard that would lead to reductions in NO_2 and SO_2 emissions would likely result in some environmental benefit for some acid-sensitive areas. Nonetheless, the EPA recognizes that any such environmental benefit that would result from reductions in NO_2 and SO_2 emissions sufficient to attain the 1-hour standards cannot be specifically quantified or linked to reductions in aquatic acidification in specific ecoregions. In addition, unlike an AAI-based standard, the 1-hour standards would tend to provide more protection than is warranted in areas that are not acid-sensitive.

Further, the EPA recognizes that any benefits that would accrue as a result of actions taken to meet the 2010 1-hour NO_2 and SO_2 primary standards will occur regardless of whether we adopt identical secondary standards. Thus, there is no additional environmental benefit to be gained by making the standards identical. The EPA does not agree, however, that the Agency needs to consider future reductions that may accrue from other environmental regulations in the context of reaching a judgment as to what NAAQS is requisite to protect public welfare.

The EPA notes that the strongly held view of the commenters with respect to the proposed 1-hour standards is that the EPA should reject and not adopt a standard where there is not an adequate scientific or technical basis for judging the degree of protection which such a standard would provide. The EPA agrees with that general point. According to commenters, the 1-hour standards should be rejected because they do not have such a basis, and, as discussed below, the EPA agrees. This is consistent with the reasoning that the EPA has applied to consideration of an

AAI-based standard, as discussed above in response to comments related to an AAI-based standard. As noted above, the limitations and uncertainties in the scientific and technical basis for developing a specific AAI-based standard result in a great degree of uncertainty as to how well the quantified elements of the AAI would predict the actual relationship between varying ambient concentrations of oxides of nitrogen and sulfur and steady-state ANC levels across the distribution of water bodies within the various ecoregions in the United States. Because of this, there is a high degree of uncertainty as to the actual degree of protectiveness that such a standard would provide, especially for acid-sensitive ecoregions. At this time, the Administrator judges that the uncertainties are of such a significant nature and degree that there is no reasoned way to choose a specific AAI-based standard, in terms of a specific nationwide target ANC level or percentile of water bodies that would appropriately account for the uncertainties, since neither the direction nor the magnitude of change from the target level and percentile that would otherwise be chosen can reasonably be ascertained at this time.[14]

The EPA has also considered, in light of the public comments, whether it is necessary or appropriate under Section 109 of the CAA to make any revision to the current secondary standards for oxides of nitrogen and sulfur, having concluded that the current standards are neither adequate nor appropriate. As discussed above in section III.D.1.a, with regard to comments on the EPA's proposed decision not to set a new multi-pollutant AAI-based standard at this time, some commenters argued that the EPA cannot lawfully use uncertainty as a basis to decline to set an ecologically relevant standard, having concluded that the current secondary standards are neither adequately protective nor appropriate to provide protection to ecosystems. In response, the EPA disagrees, stating that data limitations and uncertainties in key elements of a standard, which are of such significant nature and degree as to prevent the Administrator from reaching a reasoned decision as to what specific standard would be appropriate to provide requisite protection, are an appropriate basis for deciding not to set such a standard, even one that is of an ecologically relevant form. The EPA concludes that it is appropriate to apply the same reasoning in reaching a decision as to whether to set new 1-hour NO_2 and SO_2 secondary standards. In this case, the uncertainties are arguably even greater than with an AAI-based standard, since as noted above there is no demonstrable linkage between the elements of such standards and impacts on sensitive ecosystems that the standards would be intended to address.

E. Final Decisions on Alternative Secondary Standards for Oxides of Nitrogen and Sulfur

In considering the appropriateness of establishing a new multi-pollutant AAI-based standard to provide protection against potentially adverse deposition-related effects associated with oxides of nitrogen and sulfur, or setting new secondary standards identical to the current 1-hour NO_2 and SO_2 primary standards, the Administrator took into account the information and conclusions in the ISA, REA, and PA, CASAC advice, and the views of public commenters. This consideration follows from her conclusion, discussed above in section II.D, that the existing NO_2 and SO_2 secondary standards are neither appropriate nor sufficiently protective for this purpose.

As an initial matter, the Administrator has again considered whether it is appropriate at this time to set a new multi-pollutant standard to provide protection against potentially adverse deposition-related effects associated with oxides of nitrogen and sulfur, with a structure that would better reflect the available science regarding acidifying deposition. In considering this, she recognizes that such a standard, for purposes of Section 109(b) and (d) of the CAA,[15] must in her judgment be requisite to protect public welfare, such that it would be neither more nor less stringent than necessary for that purpose. In particular, she has focused on the new AAI-based standard developed in the PA and reviewed by CASAC, as discussed above in section III.A. In so doing, the Administrator has again considered the extent to which there is a scientific basis for development of such a standard, specifically with regard to a standard that would provide protection from deposition-related aquatic acidification in sensitive aquatic ecosystems in areas across the country.

The Administrator notes that the ISA concludes that the available scientific evidence is sufficient to infer a causal relationship between acidifying deposition of nitrogen and sulfur in aquatic ecosystems, and that the deposition of oxides of nitrogen and sulfur both cause such acidification under current conditions in the United States. Further, the ISA concludes that there are well-established water quality and biological indicators of aquatic acidification as well as well-established models that address deposition, water quality, and effects on ecosystem biota, and that ecosystem sensitivity to acidification varies across the country according to present and historic nitrogen and sulfur deposition as well as geologic, soil, vegetative, and hydrologic factors. In considering public comments on the relevant scientific evidence, the Administrator notes that some commenters agree with these conclusions in the ISA, whereas other commenters question the extent to which the scientific information provides evidence of well-established water quality and biological indicators of aquatic acidification and the extent to which relevant models appropriately account for important factors or have been adequately evaluated. The Administrator has carefully considered these comments and the Agency's responses to these comments, as discussed above in section III.D. The Administrator also has considered the views of CASAC, including its general support for the conceptual framework of the AAI-based standard developed in the PA based on the assessments of the underlying scientific information in the ISA and REA.

Based on these considerations, the Administrator again concludes that the general structure of an AAI-based standard addresses the combined effects of deposition from oxides of nitrogen and sulfur by characterizing the linkages between ambient concentrations, deposition, and aquatic acidification, and that it takes into account relevant variations in these linkages across the country. She recognizes that while such a standard clearly would be quite innovative and unique, the general structure of such a standard is nonetheless well-grounded in the science underlying the relationships between ambient concentrations of oxides of nitrogen and sulfur and the aquatic acidification related to deposition of nitrogen and sulfur

[14] Thus, as discussed above, EPA's disagreement with commenters concerning adoption of an AAI-based standard at this time appears to stem from differing views on whether or not there is an adequate scientific or technical basis for judging the degree of protection which an AAI-based standard would afford. There does not appear to be a disagreement with the view that EPA should not adopt a standard absent such a scientific or technical basis.

[15] Section 109(d)(1) of the CAA requires that "* * * the Administrator shall complete a thorough review * * * and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate under * * * subsection 109(b) of this section."

associated with such ambient concentrations. Based on these considerations, the Administrator continues to agree with the conclusion in the PA, and supported by CASAC, that there is a strong scientific basis for continued development of a standard with the general structure presented in the PA. Further, the Administrator recognizes that the AAI equation, with factors quantified in the ranges discussed above and described more fully in the PA, generally performs well in identifying areas of the country that are sensitive to such acidifying deposition and indicates, as expected, that lower ambient levels of oxides of nitrogen and sulfur directionally would lead to higher calculated AAI values.

Nonetheless, while the Administrator recognizes the strong scientific foundation for the general structure of an AAI-based standard, she also recognizes that a specific AAI-based standard would depend to a great degree on atmospheric and ecological modeling, in combination with appropriate data, to specify the quantified terms of an equation that incorporates the linkages between ambient concentrations, deposition, and aquatic acidification. This equation, which defines an aquatic acidification index (AAI), has the effect of translating spatially variable ambient concentrations and ecological effects into a potential national standard.

With respect to establishing the specific terms of this equation, there are a number of important and significant uncertainties and complexities that are critical to the question of whether it is appropriate under Section 109 of the CAA to set a specific AAI-based standard at this time, recognizing that such a standard must be one that in the judgment of the Administrator is requisite to protect public welfare without being either more or less stringent than necessary for this purpose. As discussed above in section III.A, these uncertainties and complexities generally relate not to the structure of the standard, but to the quantification of the various elements of the standard, i.e., the F factors, and their representativeness at an ecoregion scale. These uncertainties and complexities, which are unique to this NAAQS review, currently preclude the characterization of the degree of protectiveness that would be afforded by such a standard, within the ranges of levels and forms identified in the PA, and the representativeness of F factors in the AAI equation described above and in the PA. These uncertainties have been generally categorized as limitations in available field data as well as uncertainties that are related to reliance on the application of ecological and atmospheric modeling at the ecoregion scale to specify the various elements of the AAI.

With regard to data limitations, the Administrator observes that there are several key limitations in the available data upon which elements of the AAI are based. For example, while ambient measurements of NO_y are made as part of a national monitoring network, the monitors are not located in locations that have been determined to be representative of sensitive aquatic ecosystems or individual ecoregions. Further, while air and water quality data are generally available in areas in the eastern United States, there is relatively sparse coverage in mountainous western areas where a number of sensitive aquatic ecosystems are located. Even in areas where relevant data are available, small sample sizes in some areas impede efforts to characterize the representativeness of the available data at an ecoregion scale, which was noted by CASAC and some commenters as being of particular concern. Also, measurements of reduced forms of nitrogen are available from only a small number of monitoring sites, and emission inventories for reduced forms of nitrogen used in atmospheric modeling are subject to considerable uncertainty.

With regard to uncertainties related to the use of ecological and atmospheric modeling, the Administrator notes in particular that model results are difficult to evaluate due to a lack of relevant observational data. For example, large uncertainties are introduced by a lack of data to inform the necessary inputs to critical load models that are the basis for factor F1 in the AAI equation. Also, observational data are not generally available to evaluate the modeled relationships between nitrogen and sulfur in the ambient air and associated deposition, which are the basis for the other factors (i.e., F2, F3, and F4) in the AAI equation.

Taking into account the above considerations, the Administrator recognizes that characterization of the uncertainties in the AAI equation as a whole represents a unique challenge in this review primarily as a result of the complexity in the structure of an AAI-based standard. In this case, the very nature of some of the uncertainties is fundamentally different than uncertainties that have been relevant in other NAAQS reviews. She notes, for example, some of the uncertainties uniquely associated with the quantification of various elements of the AAI result from limitations in the extent to which ecological and atmospheric models, which have not been used to define other NAAQS, have been evaluated. Another important type of uncertainty relates to limitations in the extent to which the representativeness of various factors can be determined at an ecoregion scale, which has not been a consideration in other NAAQS.

In combination, these limitations and uncertainties are of such a nature and degree as to result in a high degree of uncertainty as to how well the quantified elements of the AAI standard would predict the actual relationship between varying ambient concentrations of oxides of nitrogen and sulfur and steady-state ANC levels across the distribution of water bodies within the various ecoregions in the United States. Because of this, the EPA cannot reasonably characterize the actual degree of protectiveness that such a standard would provide, especially for acid-sensitive ecoregions. The uncertainties discussed here are critical for determining the actual degree of protection that would be afforded such areas by any specific target ANC level and percentile of water bodies that would be chosen in setting a new AAI-based standard, and thus for determining an appropriate AAI-based standard that meets the requirements of Section 109 of the CAA.

In considering these uncertainties in light of CASAC's advice, the Administrator notes that CASAC acknowledged that important uncertainties remain that would benefit from further study and data collection efforts, which might lead to potential revisions or modifications to the form of the standard developed in the PA. She also notes that CASAC encouraged the Agency to engage in future monitoring and model evaluation efforts to help inform the specification of model-derived elements in the AAI equation. CASAC supported the view in the PA that there was a scientific basis for consideration of an AAI, and that is what the Administrator has done in that she has fully considered an AAI-based standard. However, CASAC did not indicate that there was such a degree of scientific support for quantifying the terms of the AAI equation and setting a specific AAI-based standard at this time that it would be inappropriate to consider not setting an AAI-based standard in this review in light of the uncertainties that CASAC itself recognized.

Further, in considering these uncertainties in light of the public comments discussed above, the Administrator notes that these

uncertainties and limitations have been highlighted by a number of public commenters in support of their view that it would be inappropriate to establish an AAI-based standard at this time. Other commenters, however, noted that NAAQS decisions are always made in the face of uncertainties, and expressed the view that the uncertainties in this NAAQS review are not so great as to preclude establishing such a standard at this time.

The Administrator agrees with the commenters that note that NAAQS decisions are always made in the face of uncertainties, since the latest available scientific information upon which NAAQS are to be based is often at the leading edge of research. Thus, the EPA Administrator must always consider uncertainties in scientific and other information in reaching decisions on whether to retain or revise an existing NAAQS or to adopt a new NAAQS. As a result, it is clear that the existence of scientific uncertainty does not preclude adoption of a new or revised NAAQS. The issue here, however, is not whether uncertainty exists, but whether it is of such a significant nature and magnitude that it warrants not adopting an AAI-based standard at this time. In that context, the Administrator recognizes that the AAI-based standard considered in this review is by far the most complex form of a NAAQS standard that the EPA has considered, to date, and that this is the first review in which the scientific and technical details of an AAI-based standard have been developed for consideration. This review has served to bring into focus for the first time the nature and degree of the uncertainties associated with quantifying the specific factors in the equation that defines the AAI. Thus, in this review, the Administrator must newly consider not only the scientific basis for the conceptual framework of such a standard, but also the extent to which the available data, models, and analyses provide a reasoned basis to choose a specific AAI-based standard consistent with the requirements of Section 109 of the CAA.

The nature of the uncertainties present in this review, and the implications of those uncertainties for reaching a reasoned decision as to whether an AAI-based NAAQS could be set consistent with the requirements of section 109(b), are in sharp contrast to the nature of uncertainties present in other NAAQS reviews. In other NAAQS reviews, studies are generally available directly linking ambient air concentrations of the pollutant to evidence of effects on public health or welfare. For example, in reviewing a health-based primary NAAQS the EPA typically considers a wide range of clinical, epidemiologic, toxicologic, and other studies that evaluate the relationship between direct exposure to an ambient air pollutant and human health. The EPA also often considers laboratory or field studies or surveys that evaluate and characterize the relationship between ambient levels of an air pollutant and welfare effects, such as effects of the ambient air pollutant on the growth of plants or on injury to plants. These kinds of scientific studies have provided a reasoned basis in other reviews for the selection of an appropriate level and form of a standard, with the EPA taking into account the nature and degree of uncertainties, for example, in the relationships between varying ambient air concentrations and the impact on human health or the environment.

Further, the uncertainties present in the evidence available for other NAAQS reviews have not been of such a significant nature that they have precluded a reasoned assessment of the degree of protectiveness that would likely be afforded by specific alternative standards under consideration. In this case, however, unlike in other NAAQS reviews, multi-pollutant and multi-media pathways of exposure must be considered, and characterized in terms of an equation with several factors, where the values of those factors vary from ecoregion to ecoregion. The quantification of these factors must be based on the use of ecological and atmospheric modeling at an ecoregion scale. Further, the appropriateness of these factors depends upon analyses that could be used to determine the representativeness of the data at an ecoregion level. These circumstances, which are unique to this review, result in such large uncertainties at this time that in the aggregate they preclude the development of a reasoned assessment of the degree of protectiveness that specific alternative AAI-based standards would provide.

Based on the above considerations, the Administrator has determined that at this time it is not appropriate under Section 109 of the CAA to set a new multi-pollutant standard to address deposition-related effects of oxides of nitrogen and sulfur on aquatic acidification. As the Administrator noted in the proposal, setting a NAAQS properly involves consideration of the degree of uncertainties in the science and other information, such as gaps in the relevant data and, in this case, limitations in the evaluation of the application of relevant ecological and atmospheric models at an ecoregion scale. As noted above, the issue here is not a question of uncertainties about the scientific soundness of the structure of the AAI, but instead uncertainties in the quantification and representativeness of the elements of the AAI as they vary in ecoregions across the country. At present, in the Administrator's judgment, the unique uncertainties present in this review are of such significance that they preclude a reasoned understanding of the degree of protectiveness that would be afforded to various ecoregions across the country by a new standard defined in terms of a specific nationwide target ANC level and a specific percentile of water bodies for acid-sensitive ecoregions, together with an AAI defined in terms of ecoregion-specific F factors. The Administrator has considered whether these uncertainties could be appropriately accounted for by choosing either a more or less protective target ANC level and percentile of water bodies than would otherwise be chosen if the uncertainties did not prevent a reasoned judgment on the quantification of the AAI factors. However, in the Administrator's judgment, the uncertainties are of such a significant nature and degree that there is no reasoned way to choose such a specific nationwide target ANC level or percentile of water bodies that would appropriately account for the uncertainties, since neither the direction nor the magnitude of change from the target level and percentile that would otherwise be chosen can reasonably be ascertained at this time.

Based on the above considerations, the Administrator judges that the current limitations in relevant data and the uncertainties associated with specifying the elements of the AAI are of such nature and degree as to prevent her from reaching a reasoned judgment as to what level and form (in terms of a selected percentile) of an AAI-based standard would provide the degree of protection that the Administrator determined was requisite. While acknowledging that CASAC supported consideration of moving forward to establish the standard developed in the PA at this time, the Administrator also observes that CASAC supported conducting further field studies that would better inform the continued development or modification of such a standard. Given the current high degree of uncertainties and the large complexities inherent in quantifying the elements of such a standard, largely deriving from the nature of the standard under consideration for the first time in this review, and having fully considered

CASAC's advice and public comments, the Administrator concludes that it would be premature and not appropriate to set a new, multi-pollutant AAI-based secondary standard for oxides of nitrogen and sulfur at this time.

While the Administrator has concluded that it is not appropriate to set such a multi-pollutant standard at this time, she has determined that the Agency should undertake a field pilot program to gather additional data, and that it is appropriate that such a program be undertaken before, rather than after, reaching a decision to set such a standard. As described below in section IV, the purpose of the program is to collect and analyze data so as to enhance our understanding of the degree of protectiveness that would likely be afforded by a standard based on the AAI as developed in the PA. This will provide additional information to aid the Agency in considering an appropriate multi-pollutant standard in future reviews, specifically with respect to the acidifying effects of deposition of oxides of nitrogen and sulfur. Data generated by this field program will also support development of an appropriate monitoring network that would work in concert with such a standard to result in the intended degree of protection. The information generated during the field program can also be used to help state agencies and the EPA better understand how an AAI-based standard would work in terms of the implementation of such a standard.

While not a basis for this decision, the Administrator also recognizes, as she did at the time of the proposal, that a new, innovative AAI-based standard would raise significant implementation issues that would need to be addressed consistent with the CAA requirements for implementation-related actions following the setting of a new NAAQS. It will take time to address these issues, during which the Agency will be conducting a field pilot program to gather relevant data and the environment will benefit from reductions in oxides of nitrogen and sulfur resulting from the new NO_2 and SO_2 primary standards, as noted above, as well as reductions expected to be achieved from the EPA's Cross-State Air Pollution Rule and Mercury and Air Toxics standards. These implementation-related issues are discussed in more detail below in section IV.A.5.

The Administrator has also reconsidered whether it is appropriate at this time to set new secondary standards identical to the current 1-hour NO_2 and SO_2 primary standards. In the proposal, the Administrator recognized that the new NO_2 and SO_2 primary 1-hour standards set in 2010 were not ecologically relevant for a secondary standard to address deposition-related effects associated with oxides of nitrogen and sulfur. Nonetheless, the Administrator proposed to set new secondary standards identical to the 1-hour NO_2 and SO_2 primary standards on the basis that they would directionally provide some degree of additional protection. At that time, the Administrator reasoned that setting such standards would be consistent with her conclusions that the current NO_2 and SO_2 secondary standards are neither sufficiently protective nor appropriate in form, and that it is not appropriate to set a new, ecologically relevant multi-pollutant secondary standard at this time.

In reconsidering this proposal, the Administrator first notes that although the ISA, REA, and PA did not directly consider secondary standards set identical to the 1-hour NO_2 and SO_2 primary standards, the information and conclusions in those documents provide strong support for the judgment that such short-term, peak standards are not ecologically relevant to address deposition-related effects associated with long-term deposition from ambient concentrations of oxides of nitrogen and sulfur. The Administrator notes that commenters on this aspect of the proposal broadly and strongly supported this view. The Administrator also recognizes that the Agency has not presented in these documents or elsewhere any analysis of the degree of protectiveness that would likely be afforded by such standards with regard to deposition-related effects in general or aquatic acidification effects in particular. She also recognizes, as discussed above in response to comments on this issue, that such an analysis cannot be done since there is no demonstrable linkage between 1-hour average concentrations of NO_2 and SO_2 in the ambient air and the impact of longer-term deposition-related acidification associated with oxides of nitrogen and sulfur on sensitive aquatic ecosystems that the proposed standards were intended to address. As a result, as in the case of an AAI-based standard as discussed above, the Administrator concludes that there is no basis to make a reasoned judgment as to what levels of 1-hour NO_2 and SO_2 standards would be requisite to protect public welfare, such that the EPA cannot demonstrate a reasoned basis for judging that the proposed standards would be sufficient but not more stringent than necessary to protect against adverse deposition-related effects to sensitive ecosystems.

With regard to considering the views of CASAC, the Administrator notes that the PA did not discuss the alternative of setting secondary standards that are identical to the 1-hour NO_2 and SO_2 primary standards. As a consequence, this alternative was not presented for consideration by CASAC and therefore CASAC has not expressed its views on this alternative set of standards.

In light of the above considerations, and taking into consideration public comments, the Administrator has further considered whether it is necessary or appropriate under Section 109 of the CAA to set such 1-hour NO_2 and SO_2 secondary standards, having concluded that the current NO_2 and SO_2 secondary standards are neither adequate nor appropriate to address potentially adverse deposition-related effects on sensitive ecosystems associated with oxides of nitrogen and sulfur. In reaching this decision, the Administrator concludes that it is appropriate to apply the same reasoning as she did in reaching the decision that it is premature and not appropriate under Section 109(b) to set a new AAI-based standard at this time. In considering such 1-hour standards, the Administrator judges that the uncertainties are likely even greater than with an AAI-based standard, since as noted above there is no demonstrable linkage between the elements of such standards and impacts on sensitive ecosystems that the standards would be intended to address. In addition, with respect to areas that are not acid sensitive, and unlike an AAI standard, it is likely that the proposed 1-hour standards directionally would provide more protection than is warranted. Therefore, the Administrator now concludes that it is neither necessary nor appropriate to set 1-hour NO_2 and SO_2 secondary standards, since in her judgment setting such standards cannot reasonably be judged to provide requisite protection of public welfare.

In summary, for the reasons discussed above, and taking into account information and assessments presented in the ISA, REA, and PA, the advice and recommendations of CASAC, and the public comments on the proposal, the Administrator has decided that it is not appropriate under Section 109(b) to set any new secondary standards at this time to address potentially adverse deposition-related effects associated with oxides of nitrogen and sulfur. Further, as discussed above in section II.D, she has also decided to retain the current NO_2 and SO_2 secondary standards to address direct effects of

gaseous NO_2 and SO_2 on vegetation. Thus, taken together, the Administrator has decided to retain and not revise the current NO_2 and SO_2 secondary standards. Specifically these secondary standards include an NO_2 standard set at a level of 0.053 ppm, annual arithmetic average, and an SO_2 standard set at a level of 0.5 ppm, 3-hour average, not to be exceeded more than once per year.

IV. Field Pilot Program and Ambient Monitoring

This section discusses elements of a field pilot program and the evaluation of monitoring methods for ambient air indicators of NO_y and SO_X that could be conducted to implement the Administrator's decision to undertake such a field monitoring program in conjunction with her decision not to set a new multi-pollutant secondary standard in this review, as discussed above in section III.E. The PA included considerations related to monitoring methods and network design that could support an AAI-based standard, which were reviewed by the CASAC Ambient Monitoring Methods Subcommittee (AMMS) (Russell and Samet, 2011b). As discussed below, the CASAC AMMS supported the approach of basing a potential future air monitoring network on the existing Clean Air Status and Trends Network (CASTNET) program. In addition, the CASAC AMMS supported the use of the CASTNET filter packs (CFPs) as appropriate methods to measure the oxides of sulfur indictor, SO_X, and the use of commercially available NO_y instruments to measure the oxides of nitrogen indicator, NO_y. CASAC AMMS also supported the inclusion of complementary measurements in any future field monitoring program that would support the evaluation of the monitoring methods and air quality models upon which the AAI developed in the PA was based.

Section IV.A below outlines the objectives, scope, and key elements of the field pilot program as presented in the proposal and section IV.B summarizes the EPA's proposed approach to evaluating monitoring methods. These approaches reflect consideration of the advice of the CASAC AMMS. Public comments on the field pilot program and evaluation of monitor methods are discussed below in section IV.C. These comments have been helpful in shaping the process that the EPA is now undertaking to develop the field pilot program and monitoring methods evaluation.

The following sections provide insight into the EPA's current ideas about what could be incorporated into the pilot program, but the EPA has not made any final decisions on what will be included. These ideas will be discussed further in a draft white paper to be made available later this year for public comment. The draft white paper will present more detailed plans for the field pilot program and monitoring methods evaluation. The draft white paper is intended to serve as both a draft work plan and a vehicle for continued input from outside interests. Taking into consideration comments received on the draft white paper, the EPA will prepare a final white paper that will serve as a program management and communication document to facilitate engagement with interested stakeholders and convey the EPA's final plans.

A. Overview of Proposed Field Pilot Program

As discussed in the proposal, the primary goal of this field pilot program, and the related monitoring methods evaluation summarized below in section IV.B, is to enhance our understanding of the degree of protectiveness that would likely be afforded by a standard based on the AAI, as described above in section III.A. This program is intended to aid the Agency in considering in future reviews an appropriate multi-pollutant standard that would be requisite to protect public welfare consistent with Section 109 of the CAA, through the following objectives:

(1) Evaluate measurement methods for the ambient air indicators of NO_y and SO_X and consider designation of such methods as Federal Reference Methods (FRMs);

(2) Examine the variability and improve characterization of concentration and deposition patterns of NO_y and SO_X, as well as reduced forms of nitrogen, within and across a number of sensitive ecoregions across the country;

(3) Develop updated ecoregion-specific factors (i.e., F1 through F4) for the AAI equation based in part on new observed air quality data within the sample ecoregions as well as on updated nationwide air quality model results and expanded critical load data bases, and explore alternative approaches for developing such representative factors;

(4) Calculate ecoregion-specific AAI values using observed NO_y and SO_X data and updated ecoregion-specific factors to examine the extent to which the sample ecoregions would meet a set of alternative AAI-based standards;

(5) Develop air monitoring network design criteria for an AAI-based standard;

(6) Assess the use of total nitrate measurements as a potential alternative indicator for NO_y;

(7) Support related longer-term research efforts, including enhancements to and evaluation of modeled dry deposition algorithms; and

(8) Facilitate stakeholder engagement in addressing implementation issues associated with possible future adoption of an AAI-based standard.

The EPA proposed to use CASTNET sites (Figure IV–1) in selected acid-sensitive ecoregions to serve as the platform for this pilot program, potentially starting in late 2012 and extending through 2018. The CASTNET sites in three to five acid-sensitive ecoregions would collect NO_y and SO_X (i.e., SO_2 and p-SO_4) measurements over a 5-year period. The initial step in developing a data base of observed ambient air indicators for oxides of nitrogen and sulfur requires the addition of NO_y samplers at the pilot study sites so that a full complement of indicator measurements are available to calculate AAI values. These CASTNET sites would also be used to make supplemental observations useful for evaluation of CMAQ's characterization of factors F2–F4 in the AAI equation.

The selected ecoregions would account for geographic variability by including regions from across the United States, including the east, upper midwest, and west. Each selected ecoregion would have at least two existing CASTNET sites.

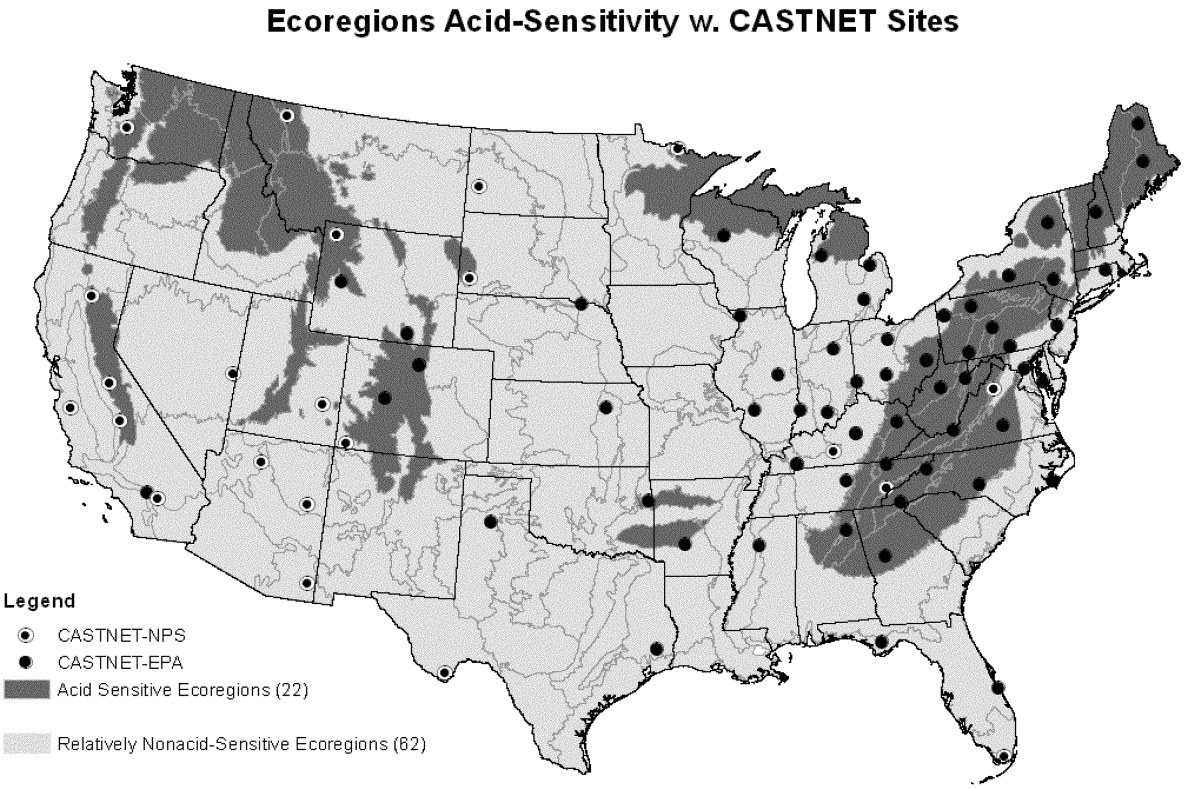


Figure IV-1. Location of CASTNET sites in relation to acid sensitive ecoregions.

Over the course of this 5-year pilot program, the most current national air quality modeling, based on the most current national emissions inventory, would be used to develop an updated set of F2–F4 factors. A parallel multi-agency national critical load data base development effort would be used as the basis for calculating updated F1 factors. As discussed above in section III.A, these factors would be based on average parameter values across an ecoregion. Using this new set of F factors, observations of NO_y and SO_X derived from the field pilot program, averaged across each ecoregion, would be used to calculate AAI values in the sample ecoregions. The data from the field pilot program would also be used to examine alternative approaches to generating representative air quality values, such as examining the appropriateness of spatial averaging in areas of high spatial variability.

Beyond this basic overview of the field pilot program, the following sections highlight complementary measurements that may be performed as part of the program (section IV.A.1), complementary areas of related research (section IV.A.2), a discussion of implementation challenges that would be addressed during the course of the field pilot program (section IV.A.3), and plans for program development and stakeholder participation (section IV.A.4).

1. Complementary Measurements

Complementary measurements may be performed at some sites in the pilot network to reduce uncertainties in the recommended methods for measuring ambient oxides of nitrogen and sulfur and to better characterize model performance and application to the AAI. The CASAC AMMS advised the EPA that such supplemental measurements were of critical importance in a field measurement program related to an AAI-based standard (Russell and Samet, 2011b).

Candidate complementary measurements to address sulfur, in addition to those provided by CFPs, include trace gas continuous SO_2 and speciated $PM_{2.5}$ measurements. The co-located deployment of a continuous SO_2 analyzer with the CFP for SO_2 will provide test data for determining suitability of continuous SO_2 measurements as a Federal Equivalent Method (FEM) for an AAI-based standard, as well as producing valuable time-series data for model evaluation purposes. The weekly averaging time provided by the CFP adequately addresses the annual-average basis of an AAI-based secondary standard, but would not be applicable to short-term (i.e., 1-hour) averages associated with the primary SO_2 standard. Conversely, because of the relatively low SO_2 concentrations associated with many acid-sensitive ecoregions, existing SO_2 FRMs designated for use in determining compliance with the primary standard, which typically are used in higher concentration environments, would not necessarily be appropriate for use in conjunction with an AAI-based secondary standard.

Co-locating the $PM_{2.5}$ sampler used in the EPA Chemical Speciation Network and the Interagency Monitoring of Protected Visual Environments (IMPROVE) network at pilot network sites would allow for characterizing the relationship between the CFP-derived p-SO_4 and the speciation samplers used throughout the state and local air quality networks. The EPA notes that CASTNET already has several co-

located IMPROVE chemical speciation samplers. Because the AAI equation is based in part on the concentration of p-SO_4, the original motivation for capturing all particle size fractions is not as important relative to simply capturing the concentration of total p-SO_4.

Candidate measurements to complement oxidized nitrogen measurements, in addition to the CFP, include a mix of continuous and periodic sampling for the dominant NO_y species, namely NO, directly measured NO_2, PAN, HNO_3, and particulate nitrate, p-NO_3. The CASAC AMMS (Russell and Samet, 2011b) recommended that the EPA consider the use of total nitrate (t-NO_3) obtained from CASTNET sampling as an indicator for NO_y, reasoning that t-NO_3 is typically a significant fraction of deposited oxidized nitrogen in rural environments and CASTNET measurements are widely available. Collection of these data would support further consideration of using the CFP for t-NO_3 as the indicator of oxides of nitrogen for use in an AAI-based secondary standard.

The CASAC AMMS also recommended that total NH_X (NH_3 and particulate ammonium (p-NH_4)) be considered as a proxy for reduced nitrogen species, reasoning that the subsequent partitioning to NH_3 and p-NH_4 may be estimated using equilibrium chemistry calculations. Reduced nitrogen measurements are used to evaluate air quality modeling that is used in generating factor F2. Additional studies are needed to determine the applicability of NH_X measurements and calculated values of NH_3 and ammonium (NH_4) to the AAI.

The additional supplemental measurements of speciated NO_y, continuous SO_2 and NH_X will be used in future air quality modeling evaluation efforts. Because there often is significant lag in the availability of contemporary emissions data to drive air quality modeling, the complete use of these data sets will extend beyond the 5-year collection period of the pilot program. Consequently, the immediate application of those data will address instrument performance comparisons that explore the feasibility of using continuous SO_2 instruments in rural environments, and using the speciated NO_y data to assess NO_y instrument performance. Although contemporary air quality modeling will lag behind measurement data availability, the observations can be used in deposition models to compare observed transference ratios with the previously calculated transference ratios to test temporal stability of the ratios.

An extended water quality sampling effort that would parallel the air quality measurement program would help to address some of the uncertainties related to factor F1 and the representativeness of the nth percentile critical load, as discussed in section III.B.5.b.i of the proposal. The objective of the water quality sampling would be to develop a larger data base of critical loads in each of the pilot ecoregions such that the nth percentile can adequately be characterized in terms of representing all water bodies. Opportunities to leverage and perhaps enhance existing ecosystem modeling efforts enabling more advanced critical load modeling and improved methods to estimate base cation production could be pursued. For example, areas with ongoing research studies producing data for dynamic critical load modeling could be considered when selecting the pilot ecoregions.

2. Complementary Areas of Research

The EPA recognizes that a source of uncertainty in an AAI-based secondary standard that would not be directly addressed in the pilot program stems from the uncertainty in the model used to link atmospheric concentrations to dry deposition fluxes. Currently, there are no ongoing direct dry deposition measurement studies at CASTNET sites that can be used to evaluate modeled results. It was strongly recommended by CASAC AMMS that a comprehensive sampling-intensive study be conducted in at least one, preferably two sites in different ecoregions to assess characterization of dry deposition of sulfur and nitrogen. These sites would be the same as those for the complementary measurements described above, but they would afford an opportunity to also complement dry deposition process research that benefits from the ambient air measurements collected in the pilot program. The concerns regarding uncertainties underlying an AAI-based secondary standard suggest that research that includes dry deposition measurements and evaluation of dry deposition models would be a high priority.

Similar leveraging could be pursued with respect to ecosystem research activities. For example, studies that capture a suite of soil, vegetation, hydrological, and water quality properties that can help evaluate more advanced critical load models would complement the atmospheric-based pilot program. In concept, such studies could provide the infrastructure for true multi-pollutant, multimedia ''super'' sites assuming the planning, coordination, and resource facets can be aligned. While this discussion emphasizes the opportunity of leveraging ongoing research efforts, consideration could be given to explicitly including related research components directly in the pilot program.

3. Implementation Challenges

The CAA requires that once a NAAQS is established, designation and implementation must move forward. With a standard as innovative as the AAI-based standard considered in this review, the Administrator believes that should such a standard be adopted in the future, its success would be greatly improved if, while additional data are being collected to reduce the uncertainties discussed above, the implementing agencies and other stakeholders have an opportunity to discuss and thoroughly understand how such a standard would work. And since, as noted above, emissions reductions that are directionally correct to reduce aquatic acidification will be occurring as a result of other CAA programs, the Administrator believes that this period of further discussion will enable agencies to implement a multi-pollutant standard to address aquatic acidification if one is adopted in a future review.

Consideration of an AAI-based secondary standard for oxides of nitrogen and sulfur would present significant implementation challenges because it involves multiple, regionally-dispersed pollutants and relatively complex compliance determinations based on regionally variable levels of NO_y and SO_X concentrations that would be necessary to achieve a national ANC target. The anticipated implementation challenges fall into three main categories: monitoring and compliance determinations for area designations, pre-construction permit application analyses of individual source impacts, and State Implementation Plan (SIP) development. Several overarching implementation questions that we anticipate will be addressed in parallel with the field pilot program's five-year data collection period include:

(1) What are the appropriate monitoring network density and siting requirements to support a compliance system based on ecoregions?

(2) Given the unique spatial nature of the secondary standard (e.g., ecoregions), what are the appropriate parameters for establishing nonattainment areas?

(3) How can new or modified major sources of oxides of nitrogen and oxides of sulfur emissions assess their ambient

impacts on the standard and demonstrate that they are not causing or contributing to a violation of the NAAQS for preconstruction permitting? To what extent does the fact that a single source may be impacting multiple areas, with different acid sensitivities and variable levels of NO_y and SO_X concentrations that would be necessary to achieve a national ANC target, complicate this assessment and how can these additional complexities best be addressed?

(4) What additional tools, information, and planning structures are needed to assist states with SIP development, including the assessment of interstate pollutant transport and deposition?

(5) Would transportation conformity apply in nonattainment and maintenance areas for this secondary standard, and, if it does, would satisfying requirements that apply for related primary standards (e.g., ozone, $PM_{2.5}$, and NO_2) be demonstrated to satisfy requirements for this secondary standard?

4. Monitoring Plan Development and Stakeholder Participation

The existing CASTNET sampling site infrastructure provides an effective means of quickly and efficiently deploying a monitoring program to support potential implementation of an AAI-based secondary standard, and also provides an additional opportunity for federally managed networks to collaborate and support the states, local agencies and tribes (SLT) in determining compliance with a secondary standard. A collaborative effort would help to optimize limited federal and SLT monitoring funds and would be beneficial to all involved. The CASTNET is already a stakeholder-based program with over 20 participants and contributors, including federal, state and tribal partners.

The CASAC AMMS generally endorsed the technical approaches used in CASTNET, but concerns were raised by individual representatives of state agencies concerning the perception of the EPA-controlled management aspects of CASTNET and data ownership. Potential approaches to resolve these issues will be developed and evaluated in existing National Association of Clean Air Agencies (NACAA)/EPA ambient air monitoring and National Atmospheric Deposition Program (NADP) science committees. The EPA Office of Air and Radiation (which includes the Office of Air Quality Planning Standards, OAQPS; and the Office of Atmospheric Program's Clean Air Markets Division, OAP–CAMD), and their partners on the NACAA monitor steering committee will work to develop a prioritized plan that identifies three to five ecoregions and specific instrumentation to be deployed. Although this pilot program is focused on data collection, the plan will also include data analysis approaches as well as a process to facilitate engagement by those within the EPA and the SLTs to foster progress on the implementation questions noted above.

B. Summary of Proposed Evaluation of Monitoring Methods

This section provides a brief overview of the EPA's plans for evaluating monitoring methods of NO_y and SO_X, as discussed in section IV.B of the proposal. The EPA generally relies on monitoring methods that have been designated as FRMs or FEMs for the purpose of determining the attainment status of areas with regard to existing NAAQS. Such FRMs or FEMs are generally required to measure the air quality indicators that are compared to the level of a standard to assess compliance with a NAAQS. Prior to their designation by the EPA as FRM/FEMs through a rulemaking process, these methods must be determined to be applicable for routine field use and need to have been experimentally validated by meeting or exceeding specific accuracy, reproducibility, and reliability criteria established by the EPA for this purpose. As discussed above in section III.A, the ambient air indicators being considered for use in an AAI-based standard include SO_2, p-SO_4, and NO_y.

The CASTNET provides a well-established infrastructure that would meet the basic location and measurement requirements of an AAI-based secondary standard given the rural placement of sites in acid sensitive areas. In addition, CFPs currently provide very economical weekly, integrated average concentration measurements of SO_2, p-SO_4, NH_4 and t-NO_3, the sum of HNO_3 and p-NO_3.

While routinely operated instruments that measure SO_2, p-SO_4, NO_y and/or t-NO_3 exist, instruments that measure p-SO_4, NO_y, t-NO_3, or the CFP for SO_2 have not been designated by the EPA as FRMs or FEMs. The EPA's Office of Research and Development has initiated work that will support future FRM designations by the EPA for SO_2 and p-SO_4 measurements based on the CFP. Such a designation by the EPA could be done for the purpose of facilitating consistent research related to an AAI-based standard and/or in conjunction with setting and supporting an AAI-based secondary standard.

Based on extensive review of literature and available data, the EPA has identified potential methods that appear suitable for measuring each of the three components of the indicators. As discussed more fully in section IV.B of the proposal, these methods are being considered as new FRMs to be used for measuring the ambient concentrations of the three components (SO_2, p-SO_4 and NO_y) that would be needed to determine compliance with an AAI-based secondary standard.

For the SO_2 and p-SO_4 measurements, the EPA is considering the CFP method, which provides weekly average concentration measurements for SO_2 and p-SO_4. This method has been used in the EPA's CASTNET monitoring network for 15 years, and experience with this method strongly indicates that it will meet the requirements for use as an FRM for the SO_2 and p-SO_4 concentrations for an AAI-based secondary standard.

Although the CFP method would provide measurements of both the SO_2 and p-SO_4 components in a unified sampling and analysis procedure, individual FRMs will be considered for each. The EPA recognizes that an existing FRM to measure SO_2 concentrations using ultra-violet fluorescence (UVF) exists (40 CFR part 50, appendix A–1) for the purpose of monitoring compliance for the primary SO_2 NAAQS. However, several factors suggest that the CFP method would be superior to the UVF FRM for monitoring compliance with an AAI-based secondary standard.

For monitoring the NO_y component, a continuous analyzer for measuring NO_y is commercially available and is considered by the EPA to be likely suitable for use as an FRM. This method is similar in design to the existing NO_2 FRM (described in 40 CFR part 50, appendix F), which is based on the ozone chemiluminescence measurement technique. The method is adapted to and further optimized to measure all NO_y. However, this NO_y method requires further evaluation before it can be fully confirmed as a suitable FRM. The EPA is currently completing a full scientific assessment of the NO_y method to determine whether it would be appropriate to consider for designation by the EPA as an FRM.

On February 16, 2011, the EPA presented this set of potential FRMs to the CASAC AMMS for their consideration and comment. In response, the CASAC AMMS stated that, overall, it believes that the EPA's planned evaluation of methods for measuring NO_y, SO_2 and p-SO_4 as ambient air indicators is a suitable

approach in concept. On supporting the CFP method as a potential FRM for SO_2, CASAC stated that they felt that the CFP is adequate for measuring long-term average SO_2 gas concentrations in rural areas with low levels (less than 5 parts per billion by volume (ppbv)) and is therefore suitable for consideration as an FRM. For p-SO_4, CASAC AMMS generally supports the use of the CFP as a potential FRM for measuring p-SO_4 for an AAI-based secondary standard. The method has been relatively well-characterized and evaluated, and it has a documented, long-term track record of successful use in a field network designed to assess spatial patterns and long-term trends. On supporting the photometric NO_y method as a potential FRM, CASAC AMMS concluded that the existing NO_y method is generally an appropriate approach for the indicator of an AAI-based standard. However, CASAC AMMS agreed that additional characterization and research is needed to fully understand the method in order to designate it as an FRM.

C. Comments on Field Pilot Program and Monitoring Methods Evaluation

Public comments on the EPA's proposed plans for a field pilot program and related evaluation of monitoring methods generally fell into the following four topic areas: (1) Goals, objectives, and scope; (2) monitoring network and site selection; (3) complementary measurements and instrumentation; and (4) collaboration and stakeholder participation. An overview of these comments and the EPA's responses are discussed below. In addition, many commenters generally requested that the EPA provide clarification of its plans regarding the field pilot program.

1. Goals, Objectives, and Scope of Field Pilot Program

There was a mix of comments regarding the need for and the overall purpose and scope of the field pilot program. In general commenters that supported the AAI approach (e.g., DOI/National Park Service (NPS), Nature Conservancy, Adirondack Council, NESCAUM, NY, PA, NC) also supported the concept of deploying a field pilot program as well as the proposed goals and objectives, while offering specific comments on the scope of the proposed monitoring effort. Other commenters supporting the AAI approach, including Earthjustice and the Center for Biological Diversity, expressed the view that a field pilot program was not needed to support adoption of such a standard in this review. A variety of commenters expressed the view that a field pilot program in 3 to 5 ecoregions was too limited to adequately capture differences in concentrations and deposition patterns across the nation.

Commenters that did not support the adoption or future development of an AAI-based secondary NAAQS (e.g., EPRI, UARG, AAM, NCBA, Aluminum Association, and TX) expressed the view that a field pilot program was therefore not needed. However, these commenters nonetheless expressed the view that if the EPA intended to consider such a standard in future reviews, the field pilot program would need to expand in coverage and incorporate a much more comprehensive research program to address data gaps and uncertainties inherent in such an approach. These commenters suggested that the field pilot program should be more responsive to the issues raised by the members of the CASAC review panel. One commenter (API) expressed the view that even if the EPA intended to consider such a standard in the future, a field study was not appropriate at this time on the basis that the AAI-based approach was still only very preliminary in nature.

These commenters not supporting the AAI and the field pilot program as proposed contended that the proposed program fails to address key scientific uncertainties and data needs with regard to a methodology based on the AAI, and cannot meaningfully reduce the uncertainties that would be associated with such a standard. Some of these commenters offered specific recommendations for areas of research, noted below, that in their view would be necessary to support any further consideration of such a standard. For example, these commenters contended that it was necessary to conduct research in the following areas before further consideration of an AAI-based standard: (1) The effect of other sources, including wastewater pollution from permitted or unpermitted sources and fertilization of farm lands, on aquatic acidification; (2) relationships between measured air quality and deposition rates and related model performance evaluations; (3) improved methods for measuring dry deposition; and (4) characterization of NH_X concentrations that are representative of specific ecoregions for all ecoregions based on a model performance evaluation.

Additional views were expressed by various commenters in regard to implementation, site selection and data availability. Many commenters from State agencies and industry agreed with the EPA that implementation challenges should be addressed during the course of the field pilot program. For example, commenters expressed the view that guidance should emerge for monitoring network design accounting for the influence of variability of air concentration and deposition patterns within specific ecoregions. Some commenters also noted that much of the underlying information for the AAI was based on the Adirondacks and Shenandoah regions which are relatively rich data sources and the field pilot program should consider under-sampled areas in other parts of country such as the mountainous West. Also, some commenters requested that relatively non-acid sensitive areas be included in the field pilot program in the interest of broader national applicability or, as one state agency suggested, the availability of a rich data base in the Chesapeake Bay region. Some commenters also expressed the view that results from the field pilot program would not be available for the next periodic review of the secondary standards for oxides of nitrogen and sulfur.

Having considered these comments contending that the scope of the field pilot program is too limited spatially and not sufficiently comprehensive, the EPA maintains that the purpose and scope of the pilot studies program as presented in the proposal remain appropriate. As summarized above in section IV.A, the primary goal of the field pilot program is to collect and analyze data so as to enhance the Agency's understanding of the degree of protectiveness that would likely be afforded by an AAI-based standard. The EPA also intends that data generated by this program would support development of an appropriate monitoring network for such a standard. This field pilot program is not intended to be a research program, but rather to be a more targeted data collection and analysis effort, which will be done in conjunction with ongoing research efforts that are better suited to address some of the issues raised by commenters on the breadth of the field pilot program.

The EPA largely agrees that the scope of the field pilot program is not adequate to address many of the issues raised by the commenters regarding either the ability to adequately capture air quality and deposition patterns in all ecoregions or fully addressing scientific uncertainties related to numerous investigations into measurement development methods and biogeochemical and atmospheric deposition processes. However, as noted earlier, a field pilot program by definition is limited in scope and

intended to guide future broader applications. Toward that end, the field pilot program is intended to provide an intermediate link between initial conceptual design and potential future development and adoption of a standard, where the breadth and depth of spatial coverage would explicitly be addressed through monitoring network rules and implementation guidance.

The relevant ongoing programs addressing underlying atmospheric deposition uncertainties and development of critical load models include the EPA's atmospheric deposition research program and the multi-agency National Critical Load Data Base (NCLDB) program, respectively. In addition, the NAAQS review process of iterative science review and assessment provides a framework for evaluating newly available information that may address current data gaps and scientific uncertainties. These research programs are appropriate venues for addressing comments, including relevant CASAC recommendations, regarding desired improvements in the science underlying an AAI-based standard. In light of these ongoing research programs, it is not appropriate to duplicate these efforts through an expanded scope of the field pilot program. Rather, the most efficient approach is to increase the coordination between the field pilot program and these existing efforts. For example, the EPA plans to explore co-locating planned dry deposition studies at field pilot program sites that would result in mutually beneficial data enhancements that support both pilot program and research program objectives.

With regard to views regarding the importance of water quality monitoring, the EPA agrees with comments recommending increased coordination with water quality sampling and critical load modeling programs. In addition to working closely with the NCLDB, the EPA plans to factor in availability of water quality monitoring data in selecting field pilot program sites. The field pilot program has the potential to spur increased water quality monitoring in under-sampled areas which would improve confidence in generating ecoregion representative critical loads, as well as enhancing longer-term assessment of progress.

In addressing the last group of comments concerning implementation, site selection and data availability, the EPA offers the following views. The field pilot program does provide an opportunity to assist in answering a number of implementation challenges, including the design of a future network that could support an AAI-based secondary standard. Toward that end, the EPA plans to work closely with its state and local agency partners in utilizing the field pilot program as a test case for implementation-based issues. In optimizing the design of a field pilot program, emphasis will be placed on relatively acid-sensitive areas given that those are areas an AAI-based standard would be intended to protect. Nevertheless, the EPA will consider ecoregions that may offer advantages in having multiple deposition-based effects beyond aquatic acidification that potentially could support future reviews that consider multiple ecological effects. In addition, nearly all ecoregions have a mix of acid-sensitive and non-acid sensitive water bodies which will allow for assessing some of the AAI applicability to different aquatic systems. The EPA also notes that the field pilot program will provide data and analyses that will help inform consideration of an AAI-based standard in the next review. For example, data and analyses generated as part of the field pilot program will be incorporated into the EPA's characterization of environmental factors and evaluations of alternative approaches to specifying the terms of an AAI that would be included in the exposure/risk assessment and policy assessment prepared as part of the next review.

2. Network Design and Role of CASTNET

Most commenters expressed the view that CASTNET was an appropriate program to support the field pilot program and a potential AAI-based standard. While government agencies generally supported the use of CASTNET, some State organizations suggested that the NCore monitoring network may be more efficient given that the costs of adding CASTNET filter packs (CFPs) to NCore locations is less than that of adding NOy instruments, which exist at NCore locations, to CASTNET locations. Support also was expressed by New York State and NESCAUM for the use of rural NCore monitoring stations, where appropriate, in combination with CASTNET sites. Some states requested that access to the sampling methods and laboratory analyses used in the program and all data results be made through a national contract for States and local agencies, a concern related to CASTNET operations being managed by the EPA. Environmental groups also supported the use of CASTNET and encouraged the EPA to adopt the multiple stakeholder process of the NCLDB program and to align CASTNET sites with the Temporally Integrated Monitoring of Ecosystems and Long-Term Monitoring (TIME/LTM) water sampling programs. These water sampling programs should also be extended to other under-sampled areas of the country that are acid sensitive. Some industry commenters raised concerns regarding the CFPs as they have measurement artifacts associated with both mass loss and gain.

Some state agencies commented that states should not be required to fund or implement the pilot monitoring studies, and funding should arise from sources other than State and Territorial Air Grant (STAG) funds. Relatedly, the NPS and environmental groups encouraged the EPA to make this effort a priority for funding.

The EPA has considered all available monitoring networks in the interest of locating the most suitable sites for a pilot study and to effectively leverage resources. The CASTNET monitoring program offers substantially more available platforms in acid-sensitive ecoregions relative to rural NCore sites and CASTNET sites already include the CFP method for measurements of key atmospheric species. Consequently, the financial burden on states, tribes and local air monitoring agencies would be less using this existing infrastructure instead of expanding measurements at or relocating rural NCore sites. The CASTNET siting design originally was intended to discern contributions of acidifying deposition of NO_X and SO_X to sensitive ecosystems, which is especially relevant for the AAI applications. NCore was designed as a more generalized network to collect measurements in a variety of geographical areas, with no specific focus on acid-sensitive ecosystems. Moreover, CASTNET has established a track record over the last two decades of providing quality measurements, whereas NCore is a relatively new network that has been fully deployed for less than two years and therefore not been subjected to review and analysis commensurate with the CASTNET program. Nevertheless, as some states suggested, this pilot program should afford an opportunity to explore the use of existing rural NCore sites in acid-sensitive ecoregions. The EPA welcomes the inclusion of rural NCore sites into the pilot study in cases where there are clear advantages of using such sites, and especially where such sites provide additional information likely resulting in more conclusive data findings. The development of site selection criteria and site selection will be conducted in partnership with other federal, state and local agencies. Although CASTNET is managed by the EPA, the agency has

aggressively supported the user community management approach adopted in the NADP and views the field pilot program as an opportunity to expand ownership of CASTNET analysis and data products, which currently can be accessed by the public.

While the field pilot program resources are focused on atmospheric measurements, as noted above the EPA will try to leverage existing water quality monitoring programs such as TIME/LTM in selecting field pilot program site locations. The EPA would rely heavily on the NCLDB critical load work for generating AAI values at monitoring locations as part of the field pilot program. In regard to issues raised by commenters regarding artifacts in the CFP, which would be the basis for SO_X data in the field pilot program, the EPA notes that these methods have been extensively deployed and evaluated and have exhibited generally excellent performance. As part of the CASAC review on measurement methods, CASAC pointed out that the CFPs are preferred methods for measuring SO_X in rural, low concentration environments due to the sensitivity of the CFP method.

3. Complementary Measurements and Instrumentation

In general, commenters across government agencies, environmental groups and industry supported the use of complementary measurements that would be deployed in addition to the CFP and NO_y instruments used to measure the indicators, NO_y and SO_X. Comments regarding these measurements were provided in different contexts. For example, industry views reflected a position that complementary measurements were necessary to address information gaps, whereas state agencies and environmental groups expressed more general support in the interest of adding additional useful data, but not as a required component of the field pilot program.

Commenters expressed support for including trace gas continuous SO_2 and speciated $PM_{2.5}$ measurements in the field pilot program to provide test data for determining the suitability of continuous SO_2 measurements as an FEM for secondary standards and to characterize the relationship between CFP-based particulate sulfate and the national network of speciation samplers used throughout the state and local air quality networks. Industry commenters suggested that dry deposition flux measurements be conducted at the field pilot program sites, while also indicating that having sites in only 3 to 5 ecoregions would be inadequate. Industry commenters also suggested deploying multiple co-located methods measuring the same species as a quality assurance step and advocated measuring individual NO_y species. Several commenters suggested adding NADP wet deposition samplers.

Several commenters supported the development of an FRM for NO_y and CFP-based SO_2 and sulfate measurements. Greater attention was addressed to NO_y measurements as the technology has only recently been used in routine monitoring applications. Some commenters supported the EPA's approach of using the EPA's research office to conduct instrument evaluation as a related but separate program from the field pilot program. Some commenters also recommended testing NO_y at locations with extreme temperature and relative humidity regimes.

The EPA appreciates the support expressed by commenters regarding the use of complementary measurements. While the EPA agrees with views expressing the importance of additional measurements, complementary measurements will not have the same funding priority as indictor measurements for NO_y and SO_X. Nevertheless, it is reasonable to expect that all field pilot program sites will also include NADP precipitation samplers and NADP passive ammonia samplers, both of which are located in roughly half of all CASTNET sites. The EPA agrees that the formal NO_y FRM development should be decoupled from the pilot studies, while recognizing that separate NO_y measurements are an important component of the pilot study. Although NO_y measurement technology is relatively mature, the effort to develop FRM certification will promote more confidence in the data due to standardized operational and quality assurance protocols.

4. Collaboration

Most commenters agreed with the EPA's intention to broaden review and participation in the field pilot program, given that the AAI approach cuts across multiple organizations and technical disciplines. Both industry and state governments suggested that some level of initial and ongoing external peer review is needed for evaluating design of the field pilot program and subsequent data analyses, with one state suggesting using NACAA's Monitoring Steering Committee. Some state commenters also reasoned that an agency's participation in the pilot program should be optional, because some states cannot support additional monitoring even if it were to be fully funded. The NPS in particular indicated a desire to participate with the EPA in the field pilot program. Clearly, many of the comments described above suggesting added emphasis on water quality monitoring and research collectively emphasize strengthening the collaborative aspects of this field pilot program.

The EPA is encouraged by commenters' interest in the field pilot program. While the EPA's Office of Air and Radiation (OAR) will assume primary leadership of this program, OAR will take several actions to promote collaboration across the internal EPA research programs and other government agencies. Paralleling this effort, the EPA will solicit comment on a draft white paper to enable ongoing review and input from the public.

These pilot studies afford an excellent opportunity to coordinate air quality monitoring and related critical load and water quality assessment activities (modeling and measurements). As part of the planning effort for these pilot studies, the EPA will engage other federal agencies (U.S. Geological Survey, NPS, U.S. Forest Service) and state and local agencies primarily through existing NADP and NACAA committee structures.

V. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011), and any changes made in response to Office of Management and Budget (OMB) recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). There are no information collection requirements directly associated with the establishment of a NAAQS under Section 109 of the CAA and this rulemaking will retain current standards and will not establish any new standards.

C. Regulatory Flexibility Act

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

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Rather, this rule will retain the current secondary standards and does not establish any new national standards. See also *American Trucking Associations* v. *EPA. 175 F. 3d at 1044–45* (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires the EPA 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 the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of Sections 202 or 205. Furthermore, as indicated previously, in setting a NAAQS the EPA cannot consider the economic or technological feasibility of attaining ambient air quality standards; although such factors may be considered to a degree in the development of state plans to implement the standards. See also *American Trucking Associations* v. *EPA, 175 F. 3d at 1043* (noting that because the EPA is precluded from considering costs of implementation in establishing NAAQS, preparation of a Regulatory Impact Analysis pursuant to the Unfunded Mandates Reform Act would not furnish any information which the court could consider in reviewing the NAAQS). Accordingly, the EPA has determined that the provisions of Sections 202, 203, and 205 of the UMRA do not apply to this final decision not to establish new standards.

E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 because it does not contain legally binding requirements. Thus, the requirements of Executive Order 13132 do not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule concerns the establishment of national standards to address the public welfare effects of oxides of nitrogen and sulfur.

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) as tribes are not obligated to adopt or implement any NAAQS. We recognize, however, that this rule does concern resources of special interest to the tribes. Accordingly, on August 3, 2011, the EPA sent letters to all tribal leaders offering to consult with the tribes on the proposed rule. On October 6, 2011 the EPA held a consultation call with the Forest County Potawatomi Community, with the participation of four other tribes (Fond du Lac Reservation, Southern Ute, Fort Belknap, and San Juan Southern Paiute). The EPA also received public comment from two tribes on this rule. The EPA has responded to the tribal comments in its Response to Comments Document.

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

This action is not subject to EO 13045 because it is not an economically significant rule as defined in EO 12866.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it will not have a significant adverse effect on the supply, distribution, or use of energy. This action does not establish new national standards to address the public welfare effects of oxides of nitrogen and sulfur.

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 the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

The EPA is not aware of any voluntary consensus standards that are relevant to the provisions of this final rule.

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

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

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority, low-income populations, or indigenous populations because it retains the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority, low-income population, or indigenous population.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the SBREFA 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. The EPA will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 4, 2012.

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List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: March 20, 2012.

Lisa P. Jackson,

Administrator.

[FR Doc. 2012–7679 Filed 4–2–12; 8:45 am]

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Part IV

The President

Proclamation 8789—Vietnam Veterans Day

Memorandum of March 30, 2012—Establishing a Working Group on the Intersection of HIV/AIDS, Violence Against Women and Girls, and Gender-related Health Disparities

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Presidential Documents

Title 3—

The President

Proclamation 8789 of March 29, 2012

Vietnam Veterans Day

By the President of the United States of America

A Proclamation

On January 12, 1962, United States Army pilots lifted more than 1,000 South Vietnamese service members over jungle and underbrush to capture a National Liberation Front stronghold near Saigon. Operation Chopper marked America's first combat mission against the Viet Cong, and the beginning of one of our longest and most challenging wars. Through more than a decade of conflict that tested the fabric of our Nation, the service of our men and women in uniform stood true. Fifty years after that fateful mission, we honor the more than 3 million Americans who served, we pay tribute to those we have laid to rest, and we reaffirm our dedication to showing a generation of veterans the respect and support of a grateful Nation.

The Vietnam War is a story of service members of different backgrounds, colors, and creeds who came together to complete a daunting mission. It is a story of Americans from every corner of our Nation who left the warmth of family to serve the country they loved. It is a story of patriots who braved the line of fire, who cast themselves into harm's way to save a friend, who fought hour after hour, day after day to preserve the liberties we hold dear. From Ia Drang to Hue, they won every major battle of the war and upheld the highest traditions of our Armed Forces.

Eleven years of combat left their imprint on a generation. Thousands returned home bearing shrapnel and scars; still more were burdened by the invisible wounds of post-traumatic stress, of Agent Orange, of memories that would never fade. More than 58,000 laid down their lives in service to our Nation. Now and forever, their names are etched into two faces of black granite, a lasting memorial to those who bore conflict's greatest cost.

Our veterans answered our country's call and served with honor, and on March 29, 1973, the last of our troops left Vietnam. Yet, in one of the war's most profound tragedies, many of these men and women came home to be shunned or neglected—to face treatment unbefitting their courage and a welcome unworthy of their example. We must never let this happen again. Today, we reaffirm one of our most fundamental obligations: to show all who have worn the uniform of the United States the respect and dignity they deserve, and to honor their sacrifice by serving them as well as they served us. Half a century after those helicopters swept off the ground and into the annals of history, we pay tribute to the fallen, the missing, the wounded, the millions who served, and the millions more who awaited their return. Our Nation stands stronger for their service, and on Vietnam Veterans Day, we honor their proud legacy with our deepest gratitude.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 29, 2012, as Vietnam Veterans Day. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities that commemorate the 50-year anniversary of the Vietnam War.

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

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Filed 4–2–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Memorandum of March 30, 2012

Establishing a Working Group on the Intersection of HIV/AIDS, Violence Against Women and Girls, and Gender-related Health Disparities

Memorandum for the Heads of Executive Departments and Agencies

Throughout our country, the spread of HIV/AIDS has had a devastating impact on many communities. In the United States, there are approximately 1.2 million people living with HIV/AIDS, including more than 290,000 women. Women and girls now account for 24 percent of all diagnoses of HIV infection among United States adults and adolescents. The domestic epidemic disproportionately affects women of color, with African Americans and Latinas constituting over 70 percent of new HIV cases in women. The spread of HIV/AIDS is, in and of itself, a primary concern to my Administration. However, gender-based violence and gender-related health disparities cannot be ignored when addressing the domestic public health threat of HIV/AIDS. HIV/AIDS programs often ignore the biological differences and the social, economic, and cultural inequities that make women and girls more vulnerable to HIV/AIDS. In our country, women and girls are all too frequently victimized by domestic violence and sexual assault, which can lead to greater risk for acquiring this disease. Teenage girls and young women ages 16–24 face the highest rates of dating violence and sexual assault. In addition, challenges in accessing proper health care can present obstacles to addressing HIV/AIDS. Gender-based violence continues to be an underreported, common problem that, if ignored, increases risks for HIV and may prevent women and girls from seeking prevention, treatment, and health services.

My Administration is committed to improving efforts to understand and address the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities. To do so, executive departments and agencies (agencies) must build on their current work addressing the intersection of these issues by improving data collection, research, intervention strategies, and training. In order to develop a comprehensive Government-wide approach to these issues that is data-driven, uses effective prevention and care interventions, engages families and communities, supports research and data collection, and mobilizes both public and private sector resources, I direct the following:

Section 1. *Working Group on the Intersection of HIV/AIDS, Violence Against Women and Girls, and Gender-related Health Disparities.* There is established within the Executive Office of the President a Working Group on the Intersection of HIV/AIDS, Violence Against Women and Girls, and Gender-related Health Disparities (Working Group), to be co-chaired by the White House Advisor on Violence Against Women and the Director of the Office of National AIDS Policy (Co-Chairs). Within 60 days of the date of this memorandum, the Co-Chairs shall convene the first meeting of the Working Group.

(a) In addition to the Co-Chairs, the Working Group shall consist of representatives from:

(i) the Department of Justice;

(ii) the Department of the Interior;

(iii) the Department of Health and Human Services;

(iv) the Department of Education;

(v) the Department of Homeland Security;

(vi) the Department of Veterans Affairs;

(vii) the Department of Housing and Urban Development; and

(viii) the Office of Management and Budget.

(b) The Working Group shall consult with the Presidential Advisory Council on HIV/AIDS, as appropriate.

(c) The Department of State, the United States Agency for International Development, and the President's Emergency Plan for AIDS Relief Gender Technical Working Group shall act in an advisory capacity to the Working Group, providing information on lessons learned and evidence-based best practices based on their global experience addressing issues involving the intersection between HIV/AIDS and violence against women.

Sec. 2. *Mission and Functions of the Working Group.* (a) The Working Group shall coordinate agency efforts to address issues involving the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities. Such efforts shall include, but not be limited to:

(i) increasing government and public awareness of the need to address the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities, including sexual and reproductive health and access to health care;

(ii) sharing best practices, including demonstration projects and international work by agencies, as well as successful gender-specific strategies aimed at addressing risks that influence women's and girls' vulnerability to HIV infection and violence;

(iii) integrating sexual and reproductive health services, gender-based violence services, and HIV/AIDS services, where research demonstrates that doing so will result in improved and sustained health outcomes;

(iv) emphasizing evidence-based prevention activities that engage men and boys and highlight their role in the prevention of violence against women and HIV/AIDS infection;

(v) facilitating opportunities for partnerships among diverse organizations from the violence against women and girls, HIV/AIDS, and women's health communities to address the intersection of these issues;

(vi) ensuring that the needs of vulnerable and underserved groups are considered in any efforts to address issues involving the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities;

(vii) promoting research to better understand the intersection of the biological, behavioral, and social sciences bases for the relationship between increased HIV/AIDS risk, domestic violence, and gender-related health disparities; and

(viii) prioritizing, as appropriate, the efforts described in paragraphs (a)(i)-(vii) of this section with respect to women and girls of color, who represent the majority of females living with and at risk for HIV infection in the United States.

(b) The Working Group shall annually provide the President recommendations for updating the National HIV/AIDS Strategy. In addition, the Working Group shall provide information on:

(i) coordinated actions taken by the Working Group to meet its objectives and identify areas where the Federal Government has achieved integration and coordination in addressing the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities;

(ii) alternative means of making available gender-sensitive health care for women and girls through the integration of HIV/AIDS prevention and

care services with intimate partner violence prevention and counseling as well as mental health and trauma services;

(iii) specific, evidence-based goals for addressing HIV among women, including HIV-related disparities among women of color, to inform the National HIV/AIDS Strategy Implementation Plan (for its biannual review);

(iv) research and data collection needs regarding HIV/AIDS, violence against women and girls, and gender-related health disparities to help develop more comprehensive data and targeted research (disaggregated by sex, gender, and gender identity, where practicable); and

(v) existing partnerships and potential areas of collaboration with other public or nongovernmental actors, taking into consideration the types of implementation or research objectives that other public or nongovernmental actors may be particularly well-situated to accomplish.

Sec. 3. *Outreach.* Consistent with the objectives of this memorandum and applicable law, the Working Group, in addition to regular meetings, shall conduct outreach with representatives of private and nonprofit organizations, State, tribal, and local government agencies, elected officials, and other interested persons to assist the Working Group in developing a detailed set of recommendations.

Sec. 4. *General Provisions.* (a) The heads of agencies shall assist and provide information to the Working Group, consistent with applicable law, as may be necessary to carry out the functions of the Working Group. Each agency and office shall bear its own expense for carrying out activities related to the Working Group.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

(e) The Secretary of Health and Human Services is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE
Washington, March 30, 2012

[FR Doc. 2012–8164
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