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9 a.m.-12:30 p.m.

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Washington, DC 20002

RESERVATIONS: (202) 741-6008



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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Doc. No. AMS-LS-11-0049]

RIN 0581-AD07

Livestock Mandatory Reporting Program; Establishment of the Reporting Regulation for Wholesale Pork

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: On April 2, 2001, the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS) implemented the Livestock Mandatory Reporting (LMR) program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act). In October 2006, the LMR program was reauthorized by Congress through September 2010. On September 28, 2010, the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) reauthorized LMR for an additional 5 years and added a provision for mandatory reporting of wholesale pork cuts. The 2010 Reauthorization Act directed the Secretary to engage in negotiated rulemaking to make required regulatory changes for mandatory wholesale pork reporting and establish a negotiated rulemaking committee to develop these changes. This final rule reflects the work of the USDA Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee).

DATES: *Effective Date:* This rule is effective on January 7, 2013.

FOR FURTHER INFORMATION CONTACT: Michael Lynch, Director; USDA, AMS, LS, LGMN Division; 1400 Independence Ave. SW., Room 2619-S; Washington, DC 20250; at (202) 720-6231; fax (202)

690-3732, or email Michael.Lynch@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The 1999 Act was enacted into law on October 22, 1999 (Pub. L. 106-78) as an amendment to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627, 1635-1638d). The purpose of the 1999 Act was to establish a program of information regarding the marketing of cattle, swine, lambs, and the products of such livestock that provides information that can be readily understood by producers; improves the price and supply reporting services of USDA; and encourages competition in the marketplace for livestock and livestock products. On December 1, 2000, AMS published the final rule to implement the LMR program as required by the 1999 Act (65 FR 75464) with an effective date of January 30, 2001. This effective date was subsequently delayed until April 2, 2001 (66 FR 8151).

The statutory authority for the program lapsed on September 30, 2005. At that time, AMS sent letters to all packers required to report under the 1999 Act requesting they continue to submit information voluntarily. In October 2006, Congress passed the Livestock Mandatory Reporting Reauthorization (2006 Reauthorization Act) (Pub. L. 109-296). The 2006 Reauthorization Act re-established the regulatory authority for the continued operation of the LMR program through September 30, 2010, and separated the reporting requirements for sows and boars from barrows and gilts, among other changes. On May 16, 2008, USDA published the final rule to re-establish and revise the LMR program (73 FR 28606). The rule incorporated the swine reporting changes contained within the 2006 Reauthorization Act, and enhanced the program's overall effectiveness and efficiency based on AMS' experience in the administration of the program. The LMR final rule became effective on July 15, 2008.

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-234) directed the Secretary of Agriculture (Secretary) to conduct a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The report from this study

concluded that voluntary negotiated wholesale pork price reporting is thin, and becoming thinner. It also found some degree of support for moving to mandatory price reporting at every segment of the industry interviewed, and that the benefits likely would exceed the cost of moving from a voluntary to a mandatory reporting program for wholesale pork. The report was delivered to Congress on March 25, 2010. A copy of the full report is available on the AMS Web site at <http://www.ams.usda.gov/AMSV1.0/marketnews> by clicking on "Livestock, Meats, Grain, and Hay," then "Livestock Mandatory Reporting."

On September 28, 2010, the 2010 Reauthorization Act (Pub. L. 111-239), reauthorized LMR for an additional 5 years and added a provision for mandatory reporting of wholesale pork cuts. The 2010 Reauthorization Act directed the Secretary to engage in negotiated rulemaking to make required regulatory changes for mandatory wholesale pork reporting and establish a negotiated rulemaking committee to develop these changes. The statute required that the committee include representatives from (i) organizations representing swine producers; (ii) organizations representing packers of pork, processors of pork, retailers of pork, and buyers of wholesale pork; (iii) the USDA; and (iv) interested parties that participate in swine or pork production. Further, the 2010 Reauthorization Act stated that any negotiated rulemaking committee established by the Secretary would not be subject to the Federal Advisory Committee Act (5 U.S.C. Appendix 2).

Purpose of Regulatory Action

The objective of this rule is to improve the price and supply reporting services of AMS in order to encourage competition in the marketplace for wholesale pork products by increasing the amount of information available to participants. This is accomplished through the establishment of a program of information regarding the marketing of wholesale pork products as specifically directed by the 1999 Act, the 2010 Reauthorization Act, and these regulations, as described in detail in the background section. Further, a mandatory wholesale pork reporting program will address concerns relative to the asymmetric availability of market

information. Previously, pork processors were not required by law to report wholesale pork cut prices. Rather, AMS collected information on daily sales and price information from pork processors on a voluntary basis. The 2008 Farm Bill directed the Secretary to conduct a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The study found that wholesale pork price reporting is thin, and frequently results in missing or unreportable price quotes for subprimals.

This final rule is issued in accordance with the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) [Pub. L. 111–239], which reauthorized Livestock Mandatory Reporting for 5 years and required the addition of wholesale pork through negotiated rulemaking.

Summary of the Major Provisions of the Regulatory Action in Question

This final rule requires packers to report wholesale pork sales to AMS. Specifically, the rule outlines what information packers will be required to submit to AMS, how the information should be submitted, and other program requirements. Packers will submit the price of each sale, quantity, and other characteristics (e.g., type of sale, item description, destination) that AMS will use to produce timely, meaningful market reports.

The final rule is effective January 7, 2013. The effective date for this final rule is the date on which packers are required to submit data. Data submitted after this date is subject to audit for compliance with the 1999 Act and subsequent regulations, including this final rule.

During the 4-month period following the publication of the regulation, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule. The Agency believes this period of time is adequate for packers to adapt to the wholesale pork reporting requirements.

AMS plans to continue publishing voluntary wholesale pork reports for a period of 180 days after the effective date of this regulation.

Costs and Benefits

The benefits of this rule are diffuse and difficult to quantify; therefore, this analysis considers benefits only on a qualitative basis. The qualitative benefits derived from the literature are:

1. The increased number of firms reporting prices to AMS under the

mandatory program will provide a more complete data set, leading to increased price transparency and more efficient price discovery;

2. Allows AMS more opportunity to keep wholesale pork reporting current with industry marketing practices and product offerings; and,

3. Provides information to industry participants that cannot afford to purchase data, including small pork processing operations, small wholesalers and retailers, and direct and niche marketing operations.

The major cost of complying with this rule involves the information collection and reporting process. The regulatory objective of this rule is to increase the amount of information available to participants in the marketplace for wholesale pork and pork products by mandating reporting of market information by certain members of the industry. The Committee developed the rule to achieve this objective in the most cost-effective manner possible. To the extent practicable, the Committee drew upon current industry practices and reporting procedures for other commodities covered by LMR in order to minimize the burden to the industry.

Annual industry costs are expected to be \$95,770. These represent start-up costs associated with information technology enhancements, recordkeeping, and submission costs. The annual cost for each of the 56 respondents is estimated to be \$1,710. Total annual cost to the government is expected to be approximately \$300,000. This is largely for salaries and benefits for personnel who will collect, review, assemble, and publish market reports on wholesale pork. Additional costs of approximately \$325,000 will be incurred in the first year to accommodate information technology system development. A complete discussion of the cost and benefits can be found under the Executive Order 12866 section.

Negotiated Rulemaking Committee

AMS convened a negotiated rulemaking committee to develop the regulatory language outlined in this rule as mandated by the 2010 Reauthorization Act. The negotiated rulemaking process, which is authorized by the Negotiated Rulemaking Act of 1996 (NRA) (5 U.S.C. 561–570), involves a committee composed of people representing interests that will be significantly affected by the rule, and the rulemaking agency developing the regulations.

On November 24, 2010, AMS published a notice announcing its intent to convene a negotiated rulemaking

committee (75 FR 71568). The notice sought public comment on the need for the committee and on its proposed membership, and provided others interested in being committee members the opportunity to submit nominations. AMS proposed a number of organizations for membership on the committee that represented those interests required to be included on such a committee by the 2010 Reauthorization Act.

Additionally, AMS solicited nominations from affected organizations who also wanted to be represented on the committee. In determining membership, AMS considered whether the interest represented by a member will be affected significantly by the final product of the committee and whether that interest was already adequately represented by other members. Under section 562(5) of the NRA, “interest” means “with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.” In accordance with the NRA, committee membership was limited to a maximum of 25 members.

On January 26, 2011, AMS announced the establishment of the Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee); responded to comments from the November 24, 2010, notice; identified the final list of members; and set forth the dates for the first meeting (76 FR 4554). The Committee members were: American Meat Institute; Chicago Mercantile Exchange; Food Marketing Institute; Grocery Manufacturers Association; Livestock Marketing Information Center; National Farmers Union; National Livestock Producers Association; National Meat Association; National Pork Producers Council; North American Meat Processors Association, American Association of Meat Processors, and Southeastern Meat Association (one combined representative for all three per organizations’ request); United Food and Commercial Workers Union; and USDA, Agricultural Marketing Service.

On February 8–10, 2011, the Committee met in St. Louis, Missouri. Notably, during this meeting, the Committee members developed ground rules that addressed general rules of conduct, participation, and reiterated the Committee’s purpose. The ground rules also established that all decisions would be made by “consensus,” and defined “consensus” as unanimous concurrence among the Committee members. The Committee held second (76 FR 12887) and third (76 FR 23513) meetings in Arlington, Virginia; March

15–17, 2011, and May 10–11, 2011, respectively. All meetings were open to the public without advance registration. Members of the public were given opportunities to make statements during the meetings at the discretion of the Committee, and were able to file written statements with the Committee for its consideration. The language developed by the Committee served as the basis for the proposed rule (77 FR 16951) and the regulatory text outlined in this final rule.

Reporting Requirements

Pork processors, or packers, will be required to report sales of wholesale pork to AMS so that AMS may produce timely, meaningful market reports. These requirements are discussed in detail in the sections immediately following and represent the information on price, volume, and related characteristics of wholesale pork sales that packers will be required to submit under LMR.

According to the LMR program (7 CFR part 59), a packer, for purposes of swine and wholesale pork reporting, is defined as any person engaged in the business of buying swine in commerce for the purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term “packer” includes only federally inspected swine processing facilities that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years and a person that slaughtered an average of at least 200,000 sows, boars, or combination thereof per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant or person that did not slaughter swine during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant or person should be considered a packer under this subpart after considering its capacity.

For the ease of the reader, this section is organized to highlight major components of the rule.

Definition of Wholesale Pork

The term “wholesale pork” represents what is widely considered wholesale pork to packers, processors, retailers, and others in the supply chain. For example, items with commonly-added ingredients used to extend shelf life, such as a salt or sodium phosphate

solution, are included in this definition, and, therefore, required to be reported. However, items that are flavored (e.g., teriyaki pork tenderloins, seasoned ribs, lemon pepper sirloin roasts) are not considered wholesale pork and are, therefore, excluded from LMR reporting requirements. For the purposes of this rule, offal (e.g., heart, kidney) is not considered wholesale pork; whereas processing floor variety meats that are normally harvested from the chilled carcass—such as neck bones, tails, skins, feet, hocks, jowls, and backfat—are considered wholesale pork and must be reported.

Reporting Times

Packers will be required to report twice a day (by 10:00 a.m. and 2:00 p.m. Central Time) for barrow and gilt product and once per day (by 2:00 p.m. Central Time) for sow and boar product. These reporting times are outlined in section 59.205, and are consistent with reporting times for other commodities covered under LMR. Separation of the reporting requirements for sow and boar product will minimize the reporting burden on sow and boar packers where possible and makes the information published for sow and boar products more meaningful to the industry. As a general rule, these plants slaughter fewer animals than their counterparts and would, therefore, have a lower number of reportable transactions. Further, publishing sow/boar product information twice daily would provide little benefit in terms of added market transparency, as prices in this sector of the market fluctuate less than in the barrow/gilt market. Many of the plants producing this type of product would be smaller in nature, and it would be unnecessarily burdensome to require twice daily reporting.

Price Reporting Basis

Packers will submit prices using two different reporting bases: Free-on-Board (F.O.B.) Omaha basis, which was used for the voluntary program; and F.O.B. Plant basis, which is used for mandatory reporting of boxed beef and lamb. This method is used to assuage concern within the industry that moving to a different reporting basis would cause unnecessary disruption in the marketplace. To ensure consistent and uniform methodology is used to obtain F.O.B. Omaha prices, AMS will provide freight information. While this information is not part of the regulation and will not be published in the Code of Federal Regulations, AMS received comments during the public comment period that its proposed methodology

did not capture all the variables involved in determining the cost of transportation. In response, AMS will investigate alternative methods for deriving an F.O.B. Omaha price and will consult, as necessary, with industry stakeholders. AMS is currently engaged in this research in order to have resolution by the informational meeting with packers, which will be scheduled following the publication of in the final rule. AMS does not believe this approach will impede or hinder packers’ ability to adapt or develop information technology systems or otherwise prepare for mandatory wholesale pork reporting.

As discussed in the proposed rule, AMS initially considered two options in developing this information to derive F.O.B. Omaha prices—a freight map with concentric zones that reflect different freight adjustments based on a shipping destination’s distance from Omaha and a per loaded mile freight rate. A zone map could prove to be difficult for reporting entities to comply with as it would not be practical to display every U.S. city, nor to expect reporting entities to know which cities belong in which zones. AMS believed a simpler option was to establish a per loaded mile freight rate that packers could apply. For example, to determine the F.O.B. Omaha price for a load of pork loins shipped to Phoenix, Arizona, the packer would figure the distance from Omaha to Phoenix and multiply that distance by the per loaded mile rate, which would then be divided by the total hundredweight of the product being shipped. This resulting freight expense would be deducted from the actual delivered price per hundredweight to reflect the F.O.B. Omaha price submitted to AMS. AMS also believed this method would be easier for reporting packers to comply with and document for audit purposes. It should be noted that regardless of the final method for determining freight, AMS will revisit this information on a quarterly basis to ensure it is up-to-date.

Prices reported to AMS shall include any applicable brokerage fees, but should not include any direct, specific, and identifiable marketing costs (such as point of purchase material, marketing funds, accruals, rebates, and export costs). Removing these types of additional costs provides AMS a more homogeneous price for reporting purposes. Furthermore, costs for things such as accruals or rebates, if known at the time of transaction, should be removed from the price provided to AMS. The requirements for reporting prices of wholesale pork sales are outlined in section 59.205.

Product Characteristics

Outlined below are items characteristic of a sale that will be reported to AMS. These items are discussed below appear in section 59.205.

Type of Sale. When packers report sales of wholesale pork to AMS, they will be identified using one of these three categories: Negotiated, forward, or formula marketing arrangement. A negotiated sale is one that represents what is considered the "spot" market, and, therefore, sets delivery parameters for both boxed product (within 14 days of the date of agreement) and combo product (within 10 days of the date of agreement). To ensure consistency with current industry practices, the day after the seller-buyer agreement will be considered "Day 1" for reporting delivery periods.

The definition of a forward sale is designed to capture transactions that occur outside the traditional negotiated, or spot, window. Therefore, the definition for forward sale means an agreement for the sale of pork where the delivery is beyond the timeframe of a negotiated sale and means a sale by a packer selling wholesale pork to a buyer of wholesale pork under which the price is determined by seller-buyer interaction and agreement.

The definition of a formula marketing arrangement bases the price paid not on seller-buyer interaction and agreement on a given day, but instead in reference to publicly available quoted prices. The definition of formula marketing arrangement was revised based on comments received to remove the requirement that this type of sale only covered product that had not already been produced. These definitions for the terms "Type of sale," "Negotiated sale," "Forward sale," and "Formula marketing agreement" appear in section 59.200.

Specifications. Packers will report a description of the specifications of each pork item being transacted (e.g., vacuum-packed ¼ inch loins) to AMS. It will be the agency's responsibility to group like products together for the purpose of publishing reports. The item's specification will also contain weight ranges for the product. Characteristics that entities would be required to report are outlined in section 59.205(a)(1).

Product Delivery Period. Packers will report the delivery period for negotiated pork trades in calendar days, as outlined in section 59.205(a)(1). This is consistent with other commodities reported under LMR, but is a change

from the way transactions were reported under the voluntary system.

Pork class. Packers will report the type of swine from which the product was derived from one of three categories: Barrow/gilt, sow, or boar. This is outlined in section 59.205(a)(1) and is accompanied by a definition for "pork class" in section 59.200.

Destination. Packers will report a product's destination in one of three categories: Domestic, Export overseas, or North American Free Trade Agreement (NAFTA).

Refrigeration. Packers will report a product's refrigeration type as a means for distinguishing fresh product transactions that may be discounted or priced differently due to age of the product. Splitting the fresh category into two product age groups provides a means for identifying product that may be discounted due to potential shelf life limitations. For reporting purposes, "Day 1" is considered the day after production. The form contained in Appendix A provides timeframes against which packers will report product refrigeration.

Specialty Pork Products. Packers will be required to report specialty pork products in order to capture trade of wholesale pork that is produced or marketed under any specialty program, such as, but not limited to, genetically-selected pork, certified programs, or specialty selection programs for quality or breed characteristics. A trademark brand on a product will not by itself make the product a specialty pork product, as outlined in section 59.200.

General Provisions

This rule amends the regulations issued in 7 CFR part 59, Livestock Mandatory Reporting, to incorporate wholesale pork into LMR. Subpart A of part 59, General Provisions, addresses requirements pertinent to all aspects of mandatory reporting. Some conforming changes are necessary to fully incorporate wholesale pork into Subpart A, and are largely administrative in nature. Most sections in Subpart A remain unchanged, but are discussed here to provide context for the reader.

Section 59.10 details how packers will be required to report information and how reporting will be handled over weekends and holidays. The information will be reported to AMS by electronic means. Electronic reporting involves the transfer of data from a packer's electronic recordkeeping system to a centrally located AMS electronic database. The packer is required to organize the information in an AMS-approved format before electronically transmitting the

information to AMS. Once the required information has been entered into the AMS database, it will be aggregated and processed into various market reports which will be released according to the daily and weekly time schedule set forth in these regulations. Information regarding the specific characteristics of each reported sale must be supplied by lot without aggregation. No changes were made to section 59.10 to accommodate the additional requirement of reporting wholesale pork cuts.

This rule requires the reporting of specific market information regarding the sales of wholesale pork products. Section 59.20 is amended by the addition of (f), *Reporting Sales of Wholesale Pork*. In addition to the aforementioned reporting requirements, packers will be required to maintain a record to indicate the time a unit of wholesale pork cuts was sold, as occurring either before 10 a.m. central time, between 10 a.m. and 2 p.m. central time, or after 2 p.m. central time. To allow packers time to collect, assemble, and submit the information to AMS by the prescribed deadlines, all covered transactions up to within one half hour of the specified reporting times are to be reported.

Further, section 59.20 identifies the recordkeeping requirements imposed by the 1999 Act and regulations on reporting entities. Reporting packers are required to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock and livestock products. In addition, they are required to maintain such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under these regulations. All of the above mentioned documentation must be maintained for at least 2 years and must be made available to employees or agents of USDA for routine compliance audits, as well as for investigations involving suspected noncompliance or potential violations. More information regarding compliance and review procedures can be found in the LMR Information section of the Livestock and Grain Market News Web site at <http://marketnews.usda.gov/portal/lg>.

Lastly, under Subpart A, section 59.30 details the general definitions of terms used throughout the regulations and applicable to all subparts. Where definitions apply to only one reportable commodity, those are included in the

appropriate subpart. For example, definitions that pertain only to swine and swine products are contained in Subpart C. The majority of definitions in section 59.30 remain unchanged from those that were published in the 2008 final rule. Changes to section 59.30 as a result of the addition of wholesale pork are found in the definitions for the terms “F.O.B.” and “Lot.” The change to F.O.B. is amended to require packers to report prices on both a plant and Omaha basis. The change to the term “Lot” adds wholesale pork. There is also an administrative change to the definition of IMPS to update a Web site address and phone number.

Other Provisions

The 1999 Act set forth the requirements for maintaining confidentiality regarding the packer reporting of proprietary information and list the conditions under which Federal employees can release such information. While none of these provisions were amended by the 2010 Reauthorization Act or will be changed as a result of this rule, they are presented here for information. These administrative provisions also establish that the Secretary can make necessary adjustments in the information reported by packers and take action to verify the information reported, and directs the Secretary to report and publish reports by electronic means to the maximum extent practical. The 1999 Act provides for what constitutes violations of that Act, such as failure to report the required information on time or failure to report accurate information.

The section on enforcement establishes a civil penalty of \$10,000 for each violation and provides for the Secretary's issuance of cease and desist orders. This section also provides for notice and hearing of violations before the Secretary, judicial review, and issuance of an injunction or restraining order. The fees section directs the Secretary to not charge or assess fees for the submission, reporting, receipt, availability, or access to published reports or information collected through this program. The section on recordkeeping requires each packer to make available to the Secretary on request for 2 years the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock and livestock products, as well as such records or other information that is necessary or appropriate to verify the accuracy of information required to be reported.

Also, the 1999 Act provides that reporting entities will not be required to report new or additional information that they do not generally have available or maintain, or the provisions of which would be unduly burdensome.

Committee Recommendations

As noted in the proposed rule (77 FR 16951), the Committee's work focused on developing regulatory text to implement mandatory wholesale pork reporting under the LMR program. The Committee also developed several recommendations that, while outside their statutory purview, were discussed in the proposed rule and were further supported by some of the comments received by AMS during the comment period. For a complete discussion of these recommendations, see the “Comments and Responses” section of this rule.

OMB Control Numbers

Subpart E of part 59 covers the OMB control number 0581–0186 assigned pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35) for the information collection requirements listed in Subparts B through D of part 59. All required information must be reported to AMS in a standardized format. The standardized form is embodied in the data collection form that is contained in Appendix A and described in Appendix B at the end of this document.

For reporting wholesale pork information, swine packers will utilize one form (Appendix A). This additional reporting requirement does not impact the reporting requirement that packers may have for other reportable commodities, such as swine.

Appendices

The final section of this document contains two appendices. These appendices will not appear in the Code of Federal Regulations. Appendix B describes the form that will be used by those required to report information under this program. The actual form is contained in Appendix A.

Comments and Responses

AMS received nine comments in response to the proposed rule (77 FR 16951). In general, commenters were supportive of the proposal, bringing wholesale pork under LMR, and of the negotiated rulemaking process. Many of the comments dealt with issues outside the scope of the proposed regulation, such as development of reports, transition period, and training sessions.

Definitions

Two commenters stated that the definition of “Specialty pork product” should be amended to clarify that the examples identified in the definition of what constitutes a specialty pork product are not limiting or all inclusive. AMS agrees with this comment and believes the changes proposed do not contradict, only clarify, the work of the Committee. Accordingly, AMS has amended the definition of specialty pork product as it appears in this rule.

One commenter suggested AMS amend the definition of “Formula marketing arrangement” because the inclusion of the phrase “executed in advance of manufacture” would exclude formula-priced product whose sale is agreed upon following manufacture. AMS agrees with this comment and believes the changes proposed do not contradict, only clarify, the work of the Committee. Accordingly, AMS has amended the definition of formula marketing arrangement as it appears in this rule.

Costs of Compliance With the Rule

One commenter asked that AMS provide technical support personnel that packers can easily access as a means of reducing start-up costs. As outlined in the preamble of the proposed rule and in this final rule, AMS recognizes there are costs associated with complying with this new requirement of LMR. Further, AMS understands the differences that exist among companies, information technology (IT) systems, and business structure. While AMS does not have the resources to dedicate an IT specialist to this transition, it will make every effort to provide IT support when needed by packers. In regards to testing of the information technology systems, AMS understands that affected entities (i.e., packers) will not effectively be able to make enhancements to their reporting systems until the requirements are known; that is, until the final rule is published. AMS will work with packers to ensure that an appropriate amount of time is allowed for development and testing of systems necessary to submit the required data. Another commenter suggested that AMS' estimates for initial start-up costs and annual submission costs were too low; however, the commenter did not provide additional information.

Transition Period

Three commenters asserted that the 6-month transition period during which both mandatory and voluntary reports will be published side-by-side is

insufficient and suggested instead a 12-month transition period. Commenters suggested that a 6-month period would not allow for observance of the seasonal differences that may exist, and, subsequently, would not provide market participants with enough information to adjust price formulas properly. While these comments do not pertain to the regulation, but rather to AMS' implementation of the mandatory wholesale pork reporting program, AMS will take these suggestions into account.

As described in the proposed rule, AMS plans to transition from a voluntary program to a mandatory program by publishing "dual" reports for 6 months. That is, for a period of time, AMS will publish reports reflecting information collected under a voluntary reporting system and reports reflecting information collected under a mandatory reporting system for wholesale pork. If AMS determines that the information collected under a voluntary program becomes of little utility before the 6-month mark, or if sufficient AMS resources are not available, it will cease collecting and publishing this information. On the contrary, if at the end of the 6-month period any problems still exist with the collection or publication of data, or if the cessation of dual reports would unnecessarily cause market disruption, AMS will consult with the industry to determine an appropriate course of action. In that instance, AMS would consider extending the dual reporting period until a full 12-month period has occurred. Further, during the transition period, AMS intends to publish reports reflecting information collected under the mandatory program on a delay and will consider the Committee's recommendation regarding the appropriate time to release such reports.

Freight Calculations

Three commenters stated their belief that the freight calculation methodology proposed by AMS is too simplistic. Commenters suggested that there are associated costs with loading product that may not be included if a simple "per mile" freight cost is used. Commenters believed this would result in F.O.B. Omaha prices that are higher than they should be, and that the agency should consider issues involving less-than-truckload (LTL) freight rates. While these comments do not pertain to the regulation, but rather to AMS' implementation of the mandatory wholesale pork reporting program, AMS will take these suggestions into account. AMS plans to discuss the freight calculation with stakeholders, with the goal of having the final methodology

determined for the planned workshops. Additional discussion is provided in the Reporting Requirements section of this document.

Reporting of Products

Two commenters requested that AMS keep the reporting of pork skins destined for domestic, North American Free Trade Agreement (NAFTA), and overseas markets separate and distinct. While these comments do not pertain to the regulation, but rather to AMS' implementation of the mandatory wholesale pork reporting program, AMS will take these suggestions into account. Further, AMS is unable to determine if confidentiality issues will arise regarding these products until information is submitted under the new program. The 1999 Act requires USDA to publish mandatory data on livestock and meat price trends, contracting arrangements, and supply and demand conditions in a manner that protects the identity of reporting entities and preserves the confidentiality of proprietary transactions. AMS' guidelines, which are commonly referred to as the "3/70/20 rule" requires the following three conditions be met for publication of information: (1) At least three reporting entities need to provide data at least 50 percent of the time over the most recent 60-day time period; (2) No single reporting entity may provide more than 70 percent of the data for a report over the most recent 60-day time period; and (3) No single reporting entity may be the sole reporting entity for an individual report more than 20 percent of the time over the most recent 60-day time period.

Training and Outreach

One commenter suggested that AMS conduct training sessions for packers who will be required to submit wholesale pork prices under LMR. AMS agrees with this comment and has allotted \$20,000 in funds for this type of activity, as outlined in the Executive Order 12866 and Executive Order 13563 sections of the proposed rule (77 FR 16951) and this rule.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Section 259 of the 1999 Act prohibits States or political subdivisions of a State to impose any requirement that is in addition to, or inconsistent with, any requirement of the 1999 Act with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock

or livestock products. In addition, the 2010 Reauthorization Act does not restrict or modify the authority of the Secretary to administer or enforce the Packers and Stockyards Act of 1921 (7 U.S.C. 181–229); administer, enforce, or collect voluntary reports under the 1999 Act, the 2006 Reauthorization Act, or any other law; or access documentary evidence as provided under sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 41–58). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to this regulation. This rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule would not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision. This rule is required by the 1999 Act. Section 259 of the 1999 Act, Federal preemption, states, "In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products."

Prior to the passage of the 1999 Act, several States enacted legislation mandating, to various degrees, the reporting of market information on transactions of cattle, swine, and lambs conducted within that particular State.

However, since the national LMR program was implemented on April 2, 2001, these State programs are no longer in effect. Therefore, there are no Federalism implications associated with this rulemaking.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated “not significant” under section 3(f) of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB). The proposed rule (77 FR 16951), however, was designated significant; and, therefore, AMS prepared a cost-benefit analysis for the proposed rule, and it was reviewed by OMB. For the final rule, AMS has prepared a cost-benefit analysis notwithstanding this rule’s non-significant designation.

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. This rule would amend the LMR regulations to implement mandatory wholesale pork reporting and was developed by the Committee, comprising organizations representing pork packers, processors, retailers, and buyers of wholesale pork; swine producers; USDA; and other interested parties.

Since all of the entities who will be required to report wholesale pork sales already report information under LMR regarding their swine purchases, costs to reporting another commodity are expected to be minimal. A complete analysis of the number of affected entities and the required volume of reporting is discussed under the

Paperwork Reduction Act (PRA) section following this section.

Alternatives to the rule’s language were thoroughly discussed during the course of the negotiated rulemaking meetings, and the consensus language reflects the best efforts of all participating parties to ensure the successful implementation of wholesale pork reporting.

Until the promulgation of this rule, pork processors were not required by law to report wholesale pork cut prices. Rather, AMS collected information on daily sales and price information from pork processors on a voluntary basis. The 2008 Farm Bill directed the Secretary to conduct a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The study found that voluntary wholesale pork price reporting is thin, and frequently results in missing or unreportable price quotes for subprimals. The number of missing data has increased over time.

In addition, changes in the way pork is traded in recent years have led to inconsistencies in industry practices and current AMS guidelines for defining reportable trades. The study found that more pork is being: (1) Traded in forms that are either not reported or not reportable (e.g., enhanced product, case ready product, branded product, or frozen product); (2) transacted through intra-firm transfer, through inter-firm transfer, through formula pricing, through forward price contracts well in advance of delivery (beyond 7 or 10 days forward as used by AMS); and, (3) destined for export markets which are excluded from AMS pork price reports for the negotiated cash guidelines used by AMS.

As a result of thin pork price reporting, industry participants had raised concerns about potential selective price reporting in the voluntary program. These concerns have reduced the perceived value of published price reports to the industry. The study found support for mandatory price reporting throughout the industry, and concluded that the benefits likely would exceed the cost of moving from a voluntary to a mandatory reporting program for wholesale pork.

The benefits of this rule are diffuse and difficult to quantify; therefore, this analysis considers benefits only on a qualitative basis. A complete discussion of the benefits is found in the summary of benefits section. The major cost of complying with this rule involves the information collection and reporting process. The information collection and reporting process is explained in the

Summary of Costs section and is referenced in section 59.10(f), Reporting Methods. A complete discussion of the cost analysis can be found in the summary of costs section.

Summary of Benefits. Government intervention in a market is conducted because the free market has tendencies to fail whenever certain criteria hold. Market failures occur in cases such as public goods, externalities, and asymmetric and/or missing information problems appear. Agricultural markets in particular are subject to information asymmetry, with both large and small operators in every aspect of the value chain, ranging from multinational corporations to part-time operators. Agricultural markets are also characterized by a large degree of uncertainty and missing information.

In 2001, George Akerloff, Michael Spence, and Joseph Stiglitz¹ won the Nobel Prize in Economics for their seminal work on the Economics of Information, establishing it as a field within economics. Their combined works showed that: (1) Even small gaps in information can cause a misallocation of resources; (2) attempts to gather information by market participants generally incur costs that may not be recouped; (3) participants may turn to the use of nonmarket “signaling” to gather information, rather than the price mechanism; (4) attempts to obtain information by the participants may themselves cause sufficient levels of distortion in the markets, even with small information costs; and, (5) the existence of other market failures can alter the individual’s valuation of the benefits and costs of information.² Each of these situations can lead to either a failure to attain an efficient equilibrium, or may lead to multiple equilibriums, both of which reduce economic welfare. Failure to achieve an equilibrium outcome can result in the failure of supply and demand to intersect at an equilibrium point, with persistent surpluses or shortages in the market.

The wholesale pork reporting study mandated by Congress found evidence consistent with Akerloff, et al., and indicates that mandatory price reporting will improve information in the wholesale pork market. Following the results of Akerloff, et al. cited above, this report found that: (1) The wholesale

¹ “The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel 2001.” Nobelprize.org. 7 Sep 2011 available at http://www.nobelprize.org/nobel_prizes/economics/laureates/2001/.

² Stiglitz, J.E. “The Contributions of the Economics of Information to Twentieth Century Economics.” 2000. *The Quarterly Journal of Economics* 115(November):1441–1478.

pork reporting information under the voluntary program is thin, getting thinner, and does not properly reflect changes in the pork market in recent years. Mandatory reporting would improve this situation by increasing the number of reporting firms, including sow/boar meat in the reporting, responding to changes in the marketing of pork and pork products, and reducing the number of missing price quotes, particularly for subprimals; (2) Data users will have improved information without incurring additional costs such as private market analyses and data subscriptions, which may be too costly for small producers, small packers, small processors, and other data users; (3) Mandatory price reporting will lead to increased transparency in prices and more efficient price discovery. In addition, price data will be more consistent with current trade practices, providing more clear-cut market information, and less need for “signaling”; (4) Mandatory wholesale pork price reporting will reduce concerns the industry now has about selective price reporting, which can potentially distort market information; and (5) Mandatory wholesale pork price reporting will benefit small market participants to a greater extent than larger participants, who are likely to have more information available to them than the smaller participants, although larger firms with more staff may have greater ability to analyze the data than small firms. The report concluded that mandatory wholesale pork reporting would reduce the inequities in market information and create a more competitive environment.

These findings indicate that mandatory price reporting will be an improvement over the current voluntary program, and that market efficiency as well as overall economic welfare will be increased by implementing the mandatory price reporting program for pork and pork products. Research on existing mandatory livestock price reporting also supports this conclusion.

Early research on problems associated with pricing in livestock markets often considered the distinction between price determination and price discovery, and the resulting issues faced by livestock producers in a particular market. Ward and Schroeder (2009)³ describe the difference between price determination and price discovery by noting that price determination is the interaction of supply and demand factors in a broad market situation to

determine the general price level. Price discovery is the process whereby buyers and sellers interact in a specific market at a specific time to ascertain the value of a commodity in that market at that time. Price discovery involves the consideration of multiple factors, including market structure, futures prices and risk management options. However, the first consideration in price discovery is typically the general market price level, i.e. price determination is the starting point for price discovery.

The importance of price reporting by AMS is that it provides data that gives market participants knowledge of the general price levels of a commodity, as well as insight into the overall conditions in that market. This information assists participants in more effectively discovering prices in their specific market.

Research on livestock mandatory pricing has demonstrated that mandatory pricing does increase transparency and improves the efficiency of the price discovery process. Ward (2004a and b)⁴ found that mandatory price reporting increased information, showing mandatory reports significantly improved the amount, type, and timeliness of data related to captive supplies, and increasing transparency. USDA’s Economic Research Service (ERS) (Perry, MacDonald, Nelson, Hahn, Arnade and Plato, 2005)⁵ extended Ward’s work, yielding similar results. ERS also found that prices were twice as volatile under the mandatory system than under the voluntary system. The reason was thought to be the filtering or interpretive role of market reporters under voluntary reporting relative to the reduced filtering role with mandatory reporting.

Koontz (2007)⁶ studied the vertical relationship between the national fed cattle price and boxed beef cutout values using a standard price transmission model. He found boxed beef cutout values had both a greater and quicker impact on fed cattle than before the mandatory program.

⁴ Ward, C.E. “Captive Supply Trends since Mandatory Price Reporting.” Oklahoma Cooperative Extension Fact Sheet F-597, November 2004a. Ward, C.E. “Captive Supply Price Relationships and Impacts.” Oklahoma Cooperative Extension Fact Sheet F-598, November 2004b.

⁵ Perry, J., J. McDonald, K. Nelson, W. Hahn, C. Arnade, and G. Plato. 2005. “Did the Mandatory Requirement Aid the Market? Impact of the Livestock Mandatory Reporting Act.” United States Department of Agriculture, Economic Research Service, LDP-M-135-01.

⁶ Koontz, S.R. “Impacts of Mandatory Price Reporting on the Relationship Between Fed Cattle Prices and the USDA Boxed Beef Cutout Value.” 2007. Working Paper, Department of Agricultural and Resource Economics, Colorado State University.

However, he also detected more uncertainty. This supports earlier research indicating both increased transparency and increased volatility associated with mandatory reporting. In addition, Lee, Ward and Brorsen (2011)⁷ examined the role of cash prices in price discovery for fed cattle and hogs as cash market share fell over the years of 2001–2010. They found that the cash market remains important for price discovery, although thinning of the cash market has had a negative impact on the process.

As the wholesale pork study indicated, there are some market participants who are likely to benefit more than others. Niche and direct marketing producers are likely to benefit from improved data, as they are less likely to be able to have other means of price determination available to them, primarily due to cost. These producers account for a small but growing segment of U.S. agriculture.

In summary, research on existing livestock mandatory price reporting has demonstrated that it has improved transparency issues in livestock markets, enabling more efficient and effective price discovery in these markets, although there has been increased variability in reported prices, largely due to the change in approach from voluntary to mandatory. This improved transparency and increased efficiency is consistent with economic theory of information. The wholesale pork reporting study mandated by Congress shows evidence that mandatory reporting will have a similar impact on the wholesale pork market.

For the economic analysis of the rule, AMS was unable to determine a quantitative assessment of the benefits due to limitations on existing research and the disparate nature of the benefits to be achieved. The qualitative benefits derived from the literature and are:

- The increased number of firms reporting prices to AMS under the mandatory program will provide a more complete data set, leading to increased price transparency and more efficient price discovery;
- Allows AMS more opportunity to keep wholesale pork reporting current with industry marketing practices and product offerings; and
- Provides information to industry participants that cannot afford to purchase data, including small pork processing operations, small

⁷ Lee Y., Ward C.E. and Brorsen, B.W. 2011. “Cash Market Importance in Price Discovery for Fed Cattles and Hogs.” Division of Agricultural Science and Natural Resources, Oklahoma Agricultural Experiment Station, Oklahoma State University.

³ Ward, C.E. and T.C. Schroeder. “Understanding Livestock Pricing Issues.” Oklahoma Cooperative Extension Fact Sheet, AGE-551 August 2009.

wholesalers and retailers, and direct and niche marketing operations.

Summary of Costs. The regulatory objective of this rule is to increase the amount of information available to participants in the marketplace for wholesale pork and pork products by mandating reporting of market information by certain members of the industry. The rule was developed in the most cost-effective manner possible, and, to the extent practicable, draws upon current industry practices and reporting procedures for other commodities covered by LMR in order to minimize the burden to the industry.

The least cost reporting method to accomplish the objectives of the rule continues to be the transfer of electronic data from the reporting entity to AMS, as is the current practice with mandatory price reporting for other covered commodities. Electronic data transmission of information is accomplished using an interface with an existing electronic recordkeeping system. Packers will provide for the translation of the information from their

existing electronic recordkeeping system into the required AMS standardized format. Once accomplished, the information will be electronically transmitted to AMS where it will be automatically loaded into an AMS database. We estimated that the creation of this interface by in-house computer personnel will require an industry average of 15 hours per respondent. Further, we estimated the cost per hour for labor to average \$49.30 (Bureau of Labor Statistics),⁸ for a total cost, on average, of \$740. Those companies not having in-house computer personnel will incur such costs as are necessary to bring in outside computer programmers to accomplish the task.

INITIAL ELECTRONIC STARTUP COST PER RESPONDENT

Hours to develop interface	15
Labor cost per hour	× \$49.30
Total cost per respondent	\$739.50

Startup Cost Prorated over 3 Year Life of Program:
 $\$739.50 / 3 = \246.50 annual cost per respondent

Additionally, AMS estimated the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions of this rule to be \$116.10 (5 hours for recordkeeping at \$23.22).

In this rule, information collection requirements include submission of the required information on a daily basis in the standard format provided in the Wholesale Pork Daily Report (LS-89). A copy of this report is included in the Appendices at the end of this rule. There are expected to be a total of 56 respondents (34 commodity pork processors, 12 sow and boar meat processors, and 10 processors of all types of meat). Plants that slaughter both commodity pork (from barrows and gilts), and sow/boar meat will file one combined report so that the maximum number of reports per day is two.

ANNUAL SUBMISSION COSTS PER RESPONDENT

Type of product	Number of respondents	Cost per respondent	Total cost
Commodity Pork	34	\$1,509.30	\$51,316.20
Sow/Boar Meat	12	754.65	9,055.80
Combination Meat Types	10	1,509.30	15,093.00
Total Annual Submission Costs	56	.....	75,465.00

By dividing total submission costs of \$75,465.00 over the total number of respondents (56) yield an average

submission cost of \$1,347.59 on an annual basis. This value can be used to estimate the total cost burden to the

industry, which is determined to be \$95,770.64 per year.

ANNUAL INDUSTRY COSTS

	Cost per respondent	Number of respondents	Total cost to industry
Start-up Costs	\$246.50	56	\$13,804.00
Recordkeeping/	116.10	56	6,501.60
Average Submission Costs	1,347.59	56	75,465.04
Total Annual Costs	1,710.19	56	95,770.64

In 2010, federally inspected pork production was 22.274 billion pounds. Assuming this level of production, the cost of this final rule to the private sector is \$4.30 per million pounds (\$95,770.64/22.274 billion pounds).

In addition to these costs to packers for submitting information, AMS will reallocate staff, issue regulations, and set up an electronic database to capture

data and develop reports. The 3 staff years required to administer and produce mandatory price reports include reporters and auditors. Salary-related costs in each year are estimated at \$271,000. Other costs include approximately \$20,000 for travel/transportation, training, and outreach; \$5,000 for miscellaneous costs such as printing, training, office supplies, and

equipment; and \$325,000 in the first year for a computer systems contract to develop the database required to manage the data.

The mandatory price reporting program would cost AMS \$621,161 in the first year of implementation, and subsequent year costs are estimated to be \$296,161. Therefore, the costs would be roughly \$404,500 per year.

⁸ http://www.bls.gov/oes/current/oes_nat.htm#00-0000.

TOTAL ANNUAL COST TO GOVERNMENT

Cost type	First year costs	Following years' costs	Average cost/year
Salaries	\$271,160.82	\$271,160.82	\$271,160.82
System Development Contract	325,000.00	.....	108,333.33
Travel (20 trips @\$1,000/trip)	20,000.00	20,000.00	20,000.00
Miscellaneous	5,000.00	5,000.00	5,000.00
Total Costs	621,160.82	296,160.82	404,494.15

Adding the costs to industry, together with the costs to government, yields the total cost to society associated with this regulation. Because benefits could not be quantified, comparison of costs with benefits is not possible. However, total costs, shown annually, over the life of the rule, and discounted over the life of the rule have been calculated. These figures show that this rule does not meet the threshold for an economically significant rule (\$100 million).

TOTAL COSTS OF REGULATION

Annual Costs	\$5,000,277.52
Total Costs over 3 Years	1,500,832.56
Discounted Costs over 3 Years (3% rate)	1,457,543.39
Discounted Costs over 3 Years (7% rate)	1,404,788.36

Regulatory Flexibility Act

This rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). The purpose of the RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace, were evaluated by the Committee. Moreover, the requirements contained in this rule were negotiated with members of the industry, some of whom represented small and mid-size firms.

Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. The 1999 Act requires AMS to collect and publish livestock market information. The required information is only available directly from those entities required to report under the 1999 Act and by these regulations and exists nowhere else. Therefore, this rule does not duplicate

market information reasonably accessible to USDA.

For any calendar year, any federally inspected swine plant which slaughtered an average of 100,000 head of swine a year for the immediately preceding 5 calendar years, and any packing firm that slaughtered at least 200,000 sows and/or boars on average during the preceding 5 years, are required to report information. Additionally, any swine plant that did not slaughter swine during the immediately preceding 5 calendar years is required to report if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant. This accounts for approximately 56 out of 611 swine plants or 9.2 percent of all federally inspected swine plants. Fully 90.8 percent of all swine plants in the U.S. are exempted by this rule from reporting information.

Accordingly, we also have prepared this final regulatory flexibility analysis. The RFA compares the size of meat packing plants to the North American Industry Classification System (NAICS) to determine the percentage of small businesses within the meat packing industry. Under these size standards, meat packing companies with 500 or less employees are considered small business entities.

Objectives and Legal Basis. The objective of this rule is to improve the price and supply reporting services of AMS in order to encourage competition in the marketplace for wholesale pork products by increasing the amount of information available to participants. This is accomplished through the establishment of a program of information regarding the marketing of wholesale pork products as specifically directed by the 1999 Act, the 2010 Reauthorization Act, and these regulations, as described in detail in the background section.

Estimated Number of Small Businesses. This rule provides for the mandatory reporting of market information by pork wholesalers who, for any calendar year, have slaughtered 100,000 head of swine during the

immediately preceding 5 calendar years, or any packing firm that has slaughtered at least 200,000 sows and/or boars on average during the preceding 5 years. Processing plants that have not slaughtered livestock during the immediately preceding 5 calendar years are also required to report if the Secretary determines that the plants should be considered packers based on their capacity.

The NAICS size standard classifies a small business in the meat packing industry as a company with less than 500 employees. Although it is common in the red meat industry for larger companies to own several plants, some of which may employ less than 500 people, those companies with a total slaughter plant employment at all locations of less than 500 are considered to be small businesses for the purposes of this rule even though individual plants are mandated to report as provided by the 1999 Act, 2010 Reauthorization Act, and this regulation.

Approximately 36 individual pork packing companies representing a total of 56 individual plants are required to report information to AMS. Based on the NAICS size standard, 24 of these 36 pork packing companies are considered small businesses, representing 27 individual plants that are required to report. The figure of 56 plants required to report represents 9.2 percent of the swine plants in the United States. The remaining 90.8 percent of swine plants, nearly all estimated to qualify as small business, are exempt from mandatory reporting.

AMS estimates the total annual burden on each swine packing entity to be, on average, \$1,710.19, including \$1,347.59 for annual costs associated with electronically submitting data, \$246.50 for annual share of initial startup costs of \$739.50, and \$116.10 for the storage and maintenance of electronic files that were submitted to AMS.

Projected Recordkeeping. Each packer required to report information to the Secretary must maintain such records as are necessary to verify the accuracy of

the information provided to AMS. This includes information regarding price, volume, weight, cut, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers are required by these regulations to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, or weighing of all transactions. Reporting packers are also required to maintain copies of the information provided to AMS. All of the above-mentioned paperwork must be kept for at least 2 years. Packers are not required to report any other new or additional information that they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain. The paperwork burden that is imposed on the packers is further discussed in the section entitled "Paperwork Reduction Act" that follows. In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule.

Professional skills required for recordkeeping under this rule are not different than those already employed

by the reporting entities. Reporting will be accomplished using computers or similar electronic means. AMS believes the skills needed to maintain such systems are already in place in those small businesses affected by this rule.

This rule as directed by the 2010 Reauthorization Act requires pork packing plants of a certain size to report information to the Secretary at prescribed times throughout the day and week. These regulations already exempt many small businesses by the establishment of daily slaughter and processing capacity thresholds. Based on figures published by the National Agricultural Statistics Service (NASS), there were 611 federally inspected swine slaughter plants operating in the United States at the end of 2010. AMS estimates that approximately 56 swine plants are required to report information, representing 9.2 percent of all federally inspected swine plants. Therefore, fully 90.8 percent of all swine plants are not required to report.

The impact of the costs of the rule to industry was also analyzed by plant capacity, measured in terms of number of head slaughtered. Industry cost by firm size, as measured in number of head slaughtered, is shown in the following table. Firms that slaughter fewer than 100,000 per year are exempt from the rule. These data do not

distinguish between barrow/gilt slaughter and sow/boar slaughter, so all firms are assumed to report on barrows/gilts.

The data show that on a per head basis, the costs of this rule range from 0.033 cents per head slaughtered for the largest firms to approximately one cent per head for the smallest plants affected by the rule. On average, the cost burden is 0.084 cents per head slaughtered. Roughly 30 plants, or 4.5 percent of all plants in the industry, have costs that exceed this value. With an average hog carcass price of \$87.90 for the year to date, and an average weight of 205 pounds per carcass, the price paid per head is roughly \$180. The additional cost of one cent per head, the largest expected cost for plants impacted by the rule, does not appear to represent a significant cost increase.

In the table below, showing data for 2010, 91.2 percent of all plants (or 557 of 611 plants) would not have been expected to incur any reporting costs. All the costs would have been borne by the largest 8.8 percent of plants. Because the data in this table do not differentiate between sow/boar and barrow & gilt plants, these figures are approximates of the actual values, but illustrate the expected distributional impacts of the rule.

HOGS, NUMBER OF FEDERALLY INSPECTED PLANTS, HEAD SLAUGHTERED, TOTAL COST, AND COST/HEAD BY SIZE GROUP UNITED STATES: 2010 *

Number head	Number of plants	Thousand head	Total cost	Cost/head
1-999	385	117.6	\$0.00	\$0.00000
1,000-9,999	116	328.4	0.00	0.00000
10,000-99,999	56	2,163.0	0.00	0.00000
100,000-249,999	14	2,235.8	23,942.66	0.01071
250,000-499,999	8	2,799.8	13,681.52	0.00489
500,000-999,999	5	3,346.7	8,550.95	0.00255
1,000,000-1,999,999	3	4,850.5	5,130.57	0.00106
2,000,000-2,999,999	11	26,862.7	18,812.09	0.00070
3,000,000-3,999,999	1	3,862.4	1,710.19	0.00044
4,000,000+	12	62,747.8	20,522.28	0.00033
Total	611	109,314.7	92,340.26	0.00084

*Source: U.S. Department of Agriculture, National Agricultural Statistics Service, "Livestock Slaughter: 2010 Annual Summary," April 2011.

In summary, the RFA analysis showed that of the 56 firms facilities that are required to report, 27 (just under half) qualify as being owned by small businesses. These 27 facilities are owned by 24 of the 36 companies subject to the rule. However, given the capital intensive nature of the industry, a more appropriate approach to the RFA analysis may be the number of head slaughtered by company. This approach was recognized by Congress in the original LMR legislation, by placing a

100,000 head minimum slaughter requirement on firms which report. Using that standard, fewer than 10 percent of all firms in the industry are affected by this regulation. In addition, the increased cost of the rule represents at most roughly 0.006 percent the current hog carcass value (\$0.01/\$180.00). Based on this analysis, AMS determined that the rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with 5 CFR part 1320, we include the description of the reporting and recordkeeping requirements and an estimate of the annual burden on packers required to report information under this rule. The OMB reference number assigned to this collection is 0581-0279. AMS plans to submit to OMB a request to merge this collection into the currently approved collection, "Livestock Mandatory

Reporting Act of 1999," OMB number 0581-0186. The reporting requirement timeline is fully discussed under Supplementary Information.

The information collection and recordkeeping requirements in this regulation are essential to establishing and implementing a mandatory program of livestock and livestock products reporting. Based on the information available, AMS estimates that there are 34 commodity pork packer plants, 12 sow/boar meat packer plants, and 10 packer plants processing both commodity pork and sow/boar meat that are required to report market information under this rule. These companies have similar recordkeeping systems and business operation practices and conduct their operations in a similar manner. AMS believes that all of the information required under this rule can be collected from existing materials and systems and that these materials and systems can be adapted to satisfy the new requirements.

The PRA also requires AMS to measure the recordkeeping burden. Under this rule, each packer required to report must maintain and make available upon request for 2 years, such records as are necessary to verify the accuracy of the information required to be reported. These records include original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery,

weighing, slaughter, or carcass characteristics of all livestock. Under this rule, the electronic data files which the packers are required to utilize when submitting information to AMS will have to be maintained as these files provide the best record of compliance. Therefore, the recordkeeping burden includes the amount of time needed to store and maintain records. AMS estimates that, since records of original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, and weighing of wholesale pork products are stored and maintained as a matter of normal business practice by these companies for a period in excess of 2 years, additional annual costs will be nominal. AMS estimates the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions of this rule to be \$116.10. This estimate includes the cost per respondent to maintain such records which is estimated to average 5 hours per year at \$23.22 per hour.

In this rule, information collection requirements have been designed to minimize disruption to the normal business practices of the affected entities. The requirements include the submission of the required information on a daily basis in the standard format provided in the form included in the Appendices section. This form requires

the minimal amount of information necessary to properly describe each reportable transaction, as required under this rule.

1. Wholesale Pork Daily Report: Form LS-89

Estimate of Burden: Public reporting burden for collection of information is estimated to be 0.125 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on wholesale pork sales to the Secretary.

Estimated Number of Respondents: 34 commodity pork plants, 12 sow/boar meat plants and 10 combination commodity pork/sow/boar meat plants.

Estimated Number of Responses per Respondent: 520 per year for commodity pork (2 per day for 260 days); 260 per year for sow/boar meat (1 per day for 260 days); and 520 per year (2 per day) for combination commodity pork/sow/boar meat.

Estimated Total Annual Burden on Respondents: 3,250 hours.

With 260 reporting days per year, commodity pork processors, and processors which produce a combination of commodity pork/sow/boar meat, will submit a total of 520 responses per year, and sow/boar meat processors will submit a total of 260 responses per year. This includes 5 hours for recordkeeping annually, for each of the 56 respondents (total recordkeeping hours of 280).

BREAKDOWN OF ESTIMATED DATA SUBMISSION COST BURDEN

Item	Reporting days	Responses	Total responses
I. Number of Responses per Respondent per Year			
Commodity Pork/Combination	260	× 2 daily	= 520
Sow/Boar Meat	260	× 1 daily	= 260

At 0.125 hours per submission, commodity pork/combination

processors will require 65.0 hours of reporting time, while sow/boar meat

processors will require 32.5 hours of reporting time.

Item	Submissions/year	Hours/submission	Total hours/year
II. Number of Submission Hours per Respondent per Year			
Commodity Pork/Combination	520	× .125	= 65.00
Sow/Boar Meat	260	× .125	= 32.50

Total annual submission costs for commodity pork and combination pork

processors is expected to be \$1,509.30 with a clerical cost of \$23.22 per hour,

including benefits. Annual costs for sow meat processors will equal \$754.65.

Item	Total hours/ year		Cost/ hour		Total \$'/ year
III. Total Submission Cost per Respondent per Year					
Commodity Pork/Combination	65.00	×	\$23.22	=	\$1,509.30
Sow/Boar Meat	32.50	×	23.22	=	754.65

A total of 44 respondents are expected to report commodity pork/combination wholesale data, while 12 sow/boar meat respondents are anticipated. Ten of the respondents will report on both types of product. In all, 56 different respondents will be reporting, incurring total annual submission costs of about \$75,465.00.

Item	Total \$'/ year		Number of respondents		Total cost
IV. Total Yearly Submission Cost for All Respondents					
Commodity Pork/Combination	\$1,509.30	×	44	=	\$66,409.20
Sow/Boar Meat	754.65	×	12	=	9,055.80
Total					75,465.00

Estimated Total Annual Burden on Respondents: \$95,770.64 including \$75,465.00 for annual costs associated with electronically submitted responses (3,250 annual hours (58.036 annual hours per 56 respondents) @ \$23.22 per hour, for a total of \$1,347.59 per respondent), initial electronic data transfer setup costs of \$13,804.00 (\$739.50 prorated over 3 years = \$246.50 per 56 respondents), and \$6,501.60 (\$116.10 per 56 respondents) for the storage and maintenance of electronic files that were submitted to AMS.

List of Subjects in 7 CFR Part 59

Cattle, Hogs, Sheep, Livestock, Lamb.
For the reasons set forth in the preamble, Title 7, Chapter I, part 59 is amended to read as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 7 U.S.C 1635–1636i.

■ 2. Section 59.20 is amended by adding paragraph (f) to read as follows:

§ 59.20 Recordkeeping.

(f) *Reporting sales of wholesale pork.* A record of a sale of wholesale pork by a packer shall evidence whether the sale occurred:

- (1) Before 10:00 a.m. central time;
- (2) Between 10:00 a.m. and 2:00 p.m. central time; or
- (3) After 2:00 p.m. central time.

■ 3. Section 59.30 is amended by:
 ■ A. Revising the definition of “F.O.B.”.
 ■ B. Revising the last two sentences in the definition of “Institutional Meat Purchase Specifications”.

■ C. Revising paragraph (3) of the definition of “Lot”.

The revisions read as follows:

§ 59.30 Definitions.

* * * * *

F.O.B. The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer (e.g., F.O.B. Plant, F.O.B. Feedlot) or from a common basis point to the buyer (e.g., F.O.B. Omaha).

Institutional Meat Purchase Specifications. * * * Phone (202) 260–8295 or Fax (202) 720–1112. Copies may also be obtained over the Internet at <http://www.ams.usda.gov/AMSV1.0/LivestockStandardizationIMPS>.

* * * * *

Lot. * * *
 (3) When used in reference to boxed beef, wholesale pork, and lamb, the term ‘lot’ means a group of one or more boxes of beef, wholesale pork, or lamb items sharing cutting and trimming specifications and comprising a single transaction between a buyer and seller.

* * * * *

- 4. Section 59.200 is amended by:
 - A. Adding, in alphabetical order, a definition for “Formula marketing arrangement”.
 - B. Adding, in alphabetical order, a definition for “Forward sale”.
 - C. Adding, in alphabetical order, a definition for “Negotiated sale”.
 - D. Adding, in alphabetical order, a definition for “Pork class”.
 - E. Adding, in alphabetical order, a definition for “Specialty pork product”.
 - F. Adding, in alphabetical order, a definition for “Type of sale”.
 - G. Adding, in alphabetical order, a definition for “Variety meats”.

■ H. Adding, in alphabetical order, a definition for “Wholesale pork”.

The additions read as follows:

§ 59.200 Definitions.

* * * * *

Formula marketing arrangement. When used in reference to wholesale pork, the term ‘formula marketing arrangement’ means an agreement for the sale of pork under which the price is established in reference to publicly-available quoted prices.

* * * * *

Forward sale. When used in reference to wholesale pork, the term ‘forward sale’ means an agreement for the sale of pork where the delivery is beyond the timeframe of a “negotiated sale” and means a sale by a packer selling wholesale pork to a buyer of wholesale pork under which the price is determined by seller-buyer interaction and agreement.

* * * * *

Negotiated sale. The term ‘negotiated sale’ means a sale by a packer selling wholesale pork to a buyer of wholesale pork under which the price is determined by seller-buyer interaction and agreement, and scheduled for delivery not later than 14 days for boxed product and 10 days for combo product after the date of agreement. The day after the seller-buyer agreement shall be considered day one for reporting delivery periods.

* * * * *

Pork class. The term “pork class” means the following types of swine purchased for slaughter:
 (1) Barrow/gilt;
 (2) Sow;
 (3) Boar.

* * * * *

Specialty pork product. The term ‘specialty pork product’ means wholesale pork produced and marketed under any specialty program such as, but not limited to, genetically-selected pork, certified programs, or specialty selection programs for quality or breed characteristics.

* * * * *

Type of sale. The term “type of sale” with respect to wholesale pork means a negotiated sale, forward sale, or formula marketing arrangement.

Variety meats. The term ‘variety meats’ with respect to wholesale pork means cut/processing floor items, such as neck bones, tails, skins, feet, hocks, jowls, and backfat.

Wholesale pork. The term ‘wholesale pork’ means fresh and frozen primals, sub-primals, cuts fabricated from sub-primals, pork trimmings, pork for processing, and variety meats (excluding portion-control cuts, cuts flavored above and beyond normal added ingredients that are used to enhance products, cured, smoked, cooked, and tray packed products). When referring to wholesale pork, added ingredients are used to enhance the product’s performance (e.g. tenderness, juiciness) through adding a solution or emulsion via an injection or immersion process. The ingredients shall be limited to water, salt, sodium phosphate, antimicrobials, or any other similar combination of foresaid or similar ingredients and in accordance with established USDA regulations.

■ 5. Adding a new § 59.205 to read as follows:

§ 59.205 Mandatory reporting of wholesale pork sales.

(a) *Daily reporting.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day for barrows and gilts (once by 10 a.m. central time, and once by 2 p.m. central time) and once each reporting day for sows and boars (by 2 p.m. central time) the following information on total pork sales established on that day inclusive since the last reporting as described in § 59.10(b):

(1) The price for each wholesale pork sale, as defined herein, quoted in dollars per hundredweight on an F.O.B. Plant and an F.O.B. Omaha basis as outlined in § 59.205(d). The price shall include

brokerage fees, if applicable. All direct, specific, and identifiable marketing costs (such as point of purchase material, marketing funds, accruals, rebates, and export costs) shall be deducted from the net price if applicable and known at the time of sale;

(2) The quantity for each pork sale, quoted by number of pounds sold; and

(3) The information regarding the characteristics of each sale is as follows:

(i) The type of sale;

(ii) Pork item description;

(iii) Pork item product code;

(iv) The product delivery period, in calendar days;

(v) The pork class (barrow/gilt, sow, boar);

(vi) Destination (Domestic, Export/Overseas, NAFTA);

(vii) Type of Refrigeration (Fresh, Frozen, age range of fresh product); and

(viii) Specialty pork product, if applicable

(b) *Publication.* The Secretary shall make available to the public the information obtained under paragraph (a) of this section not less frequently than twice each reporting day for gilt and barrow product and once each reporting day for sow and boar product.

(c) The Secretary shall obtain product specifications upon request.

(d) The Secretary shall provide freight information for the purpose of calculating prices on an F.O.B. Omaha basis. The Secretary shall provide this information periodically, but not less than quarterly.

Dated: August 15, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

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

Appendix A—Swine Mandatory Reporting Form

The following form referenced in Subpart C of part 59 would be used by persons required to report electronically transmitted mandatory market information on domestic sales of boxed beef to AMS.

Swine.

LS-89—Wholesale Pork Daily Report

Appendix B—Mandatory Reporting Guideline

The following mandatory reporting form guidelines will be used by persons required

to report electronically transmitted mandatory market information to AMS.

The first 10 fields of each mandatory reporting form provide the following information: Identification number (plant establishment number ID number), company name (name of parent company), plant street address (street address for plant), plant city (city where plant is located), plant state (state where plant is located), plant zip code (zip code where plant is located), contact name (the name of the corporate representative contact at the plant), phone number (full phone number for the plant including area code), reporting date (date the information is due to be submitted (mm/dd/yyyy)), and reporting time (the submission time corresponding to the 10:00 a.m. and the 2:00 p.m. reporting requirements).

(a) Wholesale Pork Mandatory Reporting Forms

(1) LS-89—Wholesale Pork Daily Report. For lots comprising multiple items, provide information for each item in a separate record identified with the same lot identification or purchase order number.

(i) Lot identification or purchase order number (11). Enter code used to identify the lot to the packer.

(ii) Destination (12). Enter ‘1’, domestic, for product shipped within the 50 States; ‘2’, exported, for product shipped overseas; and ‘3’, exported, for product shipped NAFTA (Canada or Mexico).

(iii) Sales type code (13). Enter the code corresponding to the sale type of the lot of wholesale pork.

(iv) Delivery period code (14). Enter the code corresponding to the delivery time period of the lot of wholesale pork.

(v) Refrigeration (15). Enter ‘1’ if the product is sold in 0–6 days fresh, combo; ‘2’ if the product is sold 7 or more days fresh, combo; ‘3’ if the product is sold 0–10 days fresh, boxed; ‘4’ if the product is sold 11 or more days fresh, boxed; and ‘5’ if the product is sold in a frozen condition.

(vi) Class code (16). Enter ‘1’ if the product was derived from barrows/gilts, ‘2’ for sows, ‘3’ for boar, and ‘4’ for mixed.

(vii) Pork item product code (17). Enter the company product code for item sold.

(viii) Pork item—Description (18). Enter the pork item name.

(ix) Total product weight (19). Enter the total weight of the wholesale pork cuts in the lot in pounds.

(xii) F.O.B. Plant Price (20). Enter the price received for each wholesale pork cut in the lot in dollars per one hundred pounds, FOB Plant basis.

(xiii) F.O.B. Omaha Price (21). Enter the price received for each wholesale pork cut in the lot in dollars per one hundred pounds, FOB Omaha basis.

BILLING CODE 3410-02-P

FORM APPROVED - OMB NO. 0581-0279

 <p>UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE</p> <p>WHOLESALE PORK DAILY REPORT</p>			
1. IDENTIFICATION NUMBER	DELIVERY PERIOD CODE 1 = 0-14 DAYS BOX 2 = 15-60 DAYS BOX 3 = 61 DAYS/UP BOX 4 = 0-10 DAYS COMBO 5 = 11-60 DAYS COMBO 6 = 61 DAYS/UP COMBO	CLASS CODE 1 = BARROW/GILTS 2 = SOW 3 = BOAR 4 = MIXED BAR/GLT/SOW/BOAR	REFRIGERATION CODE 1 = 0-6 FRESH, COMBO 2 = 7+ FRESH, COMBO 3 = 0-10 FRESH, BOXED 4 = 11+ FRESH, BOXED 5 = FROZEN
2. COMPANY NAME			
3. PLANT STREET ADDRESS			
4. PLANT CITY			
5. PLANT STATE			
6. PLANT ZIP CODE			
7. CONTACT NAME			
8. PHONE NUMBER (include area code)			
9. REPORTING DATE (mm/dd/yyyy)			
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)			
11. LOT IDENTIFICATION			
12. DESTINATION (1 = Domestic; 2 = Export/Overseas; 3 = NAFTA)			
13. SALES TYPE CODE			
14. DELIVERY PERIOD CODE			
15. REFRIGERATION			
16. CLASS CODE			
<p>NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-NEW. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.</p>			
17. PORK ITEM PRODUCT CODE			
18. PORK ITEM - Description			
19. TOTAL PRODUCT WEIGHT			
20. FOB PLANT PRICE (\$/CWT)			
21. FOB OMAHA PRICE (\$/CW			

LS-89

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 27 and 29**

[Docket No. FAA-2009-0660; Amdt. Nos. 27-47, 29-54]

RIN 2120-AJ52

Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structures; OMB Approval of Information Collection**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule; OMB approval of information collection.

SUMMARY: This document notifies the public of the Office of Management and Budget's (OMB's) approval of the information collection requirement contained in the FAA's final rule, "Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structures," which was published on December 1, 2011.

DATES: The rule published on December 1, 2011, and became effective on January 30, 2012. However, at the time of publication, the new information collection requirements imposed by 14 CFR 27.573 and 29.573 lacked OMB approval. This document announces receipt of OMB's June 28, 2012 approval.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Sharon Y. Miles, Regulations and Policy Group, Rotorcraft Directorate, ASW-111, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137-0111; telephone (817) 222-5122; facsimile (817) 222-5961; email sharon.y.miles@faa.gov. For legal questions concerning this action, contact Theresa D. Dunn, Directorate Counsel, ASW-7G8, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137-0007, telephone (817) 222-5099; facsimile (817) 222-5945, email: theresa.dunn@faa.gov.

SUPPLEMENTARY INFORMATION: The final rule, "Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structures," published in the **Federal Register** (76 FR 74655) on December 1, 2011. In that rule, the FAA amended its regulations to require evaluation of fatigue and residual static strength of composite rotorcraft structures using a damage tolerance evaluation, or a fatigue evaluation if the applicant establishes that a damage tolerance evaluation is impractical.

In a correction document (77 FR 4890), published February 1, 2012, the FAA revised the **DATES** section of the final rule, noting that affected parties were not required to comply with the new information collection requirements in §§ 27.573 and 29.573 until OMB approved the FAA's request to collect the information. Sections 27.573 and 29.573 include new provisions requiring an applicant to submit damage tolerance and fatigue evaluation information for principal composite structural elements or components, detail design points, and fabrication techniques. OMB approval for the information collection requirement was pending at the time of §§ 27.573 and 29.573 publication.

Under the Paperwork Reduction Act, the FAA submitted the new information collection requirements for OMB review. OMB approved the collection on June 28, 2012, and assigned the information collection OMB Control Number 2120-0753, which expires on December 31, 2012.

This publication informs affected parties of the approval and announces that as of June 28, 2012, affected parties are required to comply with the new information collection requirements in §§ 27.573 and 29.573.

Issued in Washington, DC, on August 13, 2012.

Lirio Liu,*Acting Director, Office of Rulemaking.*

[FR Doc. 2012-20685 Filed 8-21-12; 8:45 am]

BILLING CODE 4910-13-P**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 29**

[Docket No. FAA-2009-0413; Amdt. No. 29-55]

RIN 2120-AJ51

Fatigue Tolerance Evaluation of Metallic Structures; OMB Approval of Information Collection**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule; OMB approval of information collection.

SUMMARY: This document notifies the public of the Office of Management and Budget's (OMB's) approval of the information collection requirement contained in the FAA's final rule, "Fatigue Tolerance Evaluation of Metallic Structures," which was published on December 2, 2011.

DATES: The rule published on December 2, 2011, and became effective on January 31, 2012. However, at the time of publication, the new information collection requirements imposed by 14 CFR 29.571, lacked OMB approval. This document announces receipt of OMB's June 28, 2012 approval.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Sharon Y. Miles, Regulations and Policy Group, Rotorcraft Directorate, ASW-111, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, Texas 76137-0111; telephone number (817) 222-5122; facsimile (817) 222-5961; email sharon.y.miles@faa.gov. For legal questions concerning this action, contact Theresa D. Dunn, Directorate Counsel, ASW-7G8, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, Texas 76137-0007; telephone (817) 222-5099; facsimile (817) 222-5945; email: theresa.dunn@faa.gov.

SUPPLEMENTARY INFORMATION: The final rule, "Fatigue Tolerance Evaluation of Metallic Structures," published in the **Federal Register** (76 FR 75435) on December 2, 2011. In that rule, the FAA addresses advances in structural fatigue substantiation technology for metallic structures that provides an increased level of safety by avoiding or reducing the likelihood of the catastrophic fatigue failure of a metallic structure. These increased safety requirements help ensure that should serious accidental damage occur during manufacturing or within the operational life of the rotorcraft, the remaining structure could withstand, without failure, any fatigue loads that are likely to occur, until the damage is detected or the part is replaced.

In a correction document (77 FR 4890), published February 1, 2012, the FAA revised the **DATES** section of the final rule, noting that affected parties were not required to comply with the new information collection requirements in § 29.571 until OMB approved the FAA's request to collect the information. Section 29.571 includes new provisions requiring an applicant, when trying to obtain type certification of a rotorcraft, to submit substantiating data to show that the rotorcraft complies with specific certification requirements. OMB's approval for the information collection requirement was pending at the time of § 29.571 publication.

Under the Paperwork Reduction Act, the FAA submitted the new information collection requirements for OMB review. OMB approved the collection on

June 28, 2012, and assigned the information collection OMB Control Number 2120-0752, which expires on June 30, 2015.

This publication informs affected parties of the approval and announces that as of June 28, 2012, affected parties are required to comply with the new information collection requirements in § 29.571.

Issued in Washington, DC, on August 13, 2012.

Lirio Liu,

Acting Director, Office of Rulemaking.

[FR Doc. 2012-20684 Filed 8-21-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2011-1093; Directorate Identifier 2010-NM-149-AD; Amendment 39-17163; AD 2012-16-16]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 757 airplanes. This AD was prompted by a report of extensive corrosion of the ballscrew of the drive mechanism of the horizontal stabilizer trim actuator. This AD requires repetitive detailed inspections for discrepancies of the horizontal stabilizer ballscrew assembly; repetitive lubrication of the horizontal stabilizer trim control system; repetitive measurements for discrepancies of the ballscrew to ballnut freeplay; and corrective actions, if necessary. We are issuing this AD to prevent undetected failure of the primary and secondary load paths for the ballscrew in the horizontal stabilizer, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: This AD is effective September 26, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 26, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, Washington 98124-

2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Kenneth Frey, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057-3356; phone: (425) 917-6468; fax: (425) 917-6590; email: kenneth.frey@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on October 25, 2011 (76 FR 65991). That NPRM proposed to require repetitive detailed inspections for discrepancies of the horizontal stabilizer ballscrew assembly; repetitive lubrication of the horizontal stabilizer trim control system; repetitive measurements for discrepancies of the ballscrew to ballnut freeplay; and corrective actions, if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 65991, October 25, 2011) and the FAA's response to each comment.

Requests To Withdraw the NPRM (76 FR 65991, October 25, 2011)

Airlines for America (A4A), on behalf of its member American Airlines (AAL), asked that the NPRM (76 FR 65991,

October 25, 2011) be withdrawn. A4A stated that in view of previously implemented maintenance procedures designed to prevent malfunctions of the horizontal stabilizer trim actuator (HSTA), and maintenance data gathered in accomplishing those and other related procedures, the NPRM is not necessary. A4A added that those procedures include instructions mandated by AD 2005-12-18, Amendment 39-14134 (70 FR 35166, June 17, 2005), which requires inspection and overhaul of the primary brake of the HSTA, "upgrades to HSTA maintenance in the Boeing maintenance planning document (MPD), and corresponding upgrades to air carrier maintenance programs." AAL stated that the "Discussion" section of the NPRM specifies "Jackscrews and ballscrews are similar in function and have similar airplane level failure modes." AAL noted that this statement is not accurate in defining the risk posed by the ballscrew design. AAL added that the ballscrew uses ball bearings for the primary load path, and a male thread nut for the secondary load path is more tolerant of inadequate lubrication conditions than the jackscrew/acme nut design used on Model MD-80 airplanes. AAL also stated that the NPRM specifies that the unsafe condition is likely to exist or develop on other products of the same type design, which misrepresents the level of risk to the Model 757 worldwide fleet.

We disagree with the requests to withdraw the NPRM (76 FR 65991, October 25, 2011). Although the maintenance procedures in AD 2005-12-18, Amendment 39-14134 (70 FR 35166, June 17, 2005), will prevent grease contamination on the primary HSTA brake, the repetitive intervals for the subject actions are not frequent enough to prevent corrosion in the ballscrew of the drive mechanism of the HSTA, which could result in undetected failure of both the primary and secondary load paths. In light of this, we have determined that the unsafe condition is likely to exist or develop on the affected airplanes. As a result of that determination, we are issuing this AD in order to eliminate the unsafe condition by requiring that the actions be done at the required intervals.

Request To Issue Emergency Airworthiness Directive

Captain Rick Petersen, a private citizen, asked that a "more deliberate emergency type directive" be issued instead of an NPRM (76 FR 65991, October 25, 2011). The commenter stated that extensive corrosion found on

any flight control mechanism is enough evidence to justify an emergency type directive.

We do not agree with the commenter's request. Before issuing the NPRM (76 FR 65991, October 25, 2011), we considered the urgency of the identified unsafe condition and the actions required to correct that unsafe condition. We also considered appropriate compliance times for requiring that those actions be done, in order to correct the unsafe condition in a timely manner to ensure continued safety. We coordinated those times with the manufacturer. At that time, we determined that it was practicable to provide notice and opportunity for public comment. In addition, in consideration of the amount of time that has already elapsed since issuance of the original notice, we find that to further delay issuance of this final rule by converting it to another type of AD rulemaking is inappropriate and unnecessary. Therefore, we have not changed the AD in this regard.

Requests To Change Flight Cycles to Flight Hours

A4A, on behalf of its members AAL and UPS, and Boeing requested that the airplane groups specified in paragraphs (g) and (h) of the NPRM (76 FR 65991, October 25, 2011) be identified in terms of flight hours instead of flight cycles. UPS stated that Boeing Alert Service Bulletin 757-27A0144, Revision 1, dated January 20, 2010, identifies flight hours for that determination. UPS added that in order to maintain consistency, flight cycles should be changed to flight hours. Boeing also noted that this is a grammatical error.

We agree with the commenters' requests. We inadvertently specified "total flight cycles" instead of "total flight hours." Boeing Alert Service Bulletins 757-27A0144, and 757-27A0145, both Revision 1, both dated January 20, 2010, specify groups that "* * * have completed less than or equal to 15,000 flight hours" and that "have completed more than 15,000 flight hours." We did not intend to differ from the service information. All the compliance times specified in paragraphs (g) and (h) of the NPRM (76 FR 65991, October 25, 2011) were expressed in terms of flight hours and we did not give notice in the NPRM that we were differing from the service information in this regard. Therefore, we have changed the term "total flight cycles" to "total flight hours" in the description of the affected airplanes for paragraphs (g) and (h) of this AD.

Requests To Revise Compliance Times

Boeing and A4A requested that we revise certain compliance times. Boeing asked that paragraphs (g)(1)(ii), (g)(3)(ii), (h)(1)(ii), (h)(3)(ii), (i)(1)(ii), and (i)(3)(ii) of the NPRM (76 FR 65991, October 25, 2011) be deleted, and that the compliance times in each sub-paragraph be consolidated into one compliance time in the applicable parent paragraph. Boeing stated that Boeing Alert Service Bulletins 757-27A0144 and 757-27A0145, both Revision 1, both dated January 20, 2010, do not differentiate between the airplanes on which a detailed inspection has or has not been done previously, and added that it is not included in the "Differences" section of the NPRM. Boeing noted that the only difference between the paragraphs (g)(1) and (g)(2) of the NPRM, paragraphs (g)(3) and (g)(4) of the NPRM, paragraphs (h)(1) and (h)(2) of the NPRM, paragraphs (h)(3) and (h)(4) of the NPRM, and paragraphs (i)(3) and (i)(4) of the NPRM is whether there is a 6 or 18 month compliance time allowance. Boeing also noted the only difference between paragraphs (i)(1) and (i)(2) of the NPRM is whether the HSTA has been overhauled. Boeing noted that this complicates the related actions in the NPRM, and is not necessary for the continued airworthiness of airplanes on which an HSTA is installed.

A4A, on behalf of its member AAL, requested that we revise the compliance times specified in paragraphs (g)(1), (h)(1), (i)(1), (g)(2), (h)(2), and (i)(2) of the NPRM (76 FR 65991, October 25, 2011), so that airplanes previously inspected and airplanes not previously inspected have the same compliance times, rather than allowing a longer compliance time for airplanes that have not been inspected. A4A also requested that we revise the compliance times specified in paragraphs (g)(3), (h)(3), (i)(3), (g)(4), and (h)(4) of the NPRM, so that HSTAs that have been previously lubricated are provided a longer compliance time.

We agree with the commenter's requests. Boeing Alert Service Bulletins 757-27A0144 and 757-27A0145, both Revision 1, both dated January 20, 2010, do not differentiate between the airplanes on which a detailed inspection has or has not been done previously. In light of this fact, we have deleted paragraphs (g)(1)(i), (g)(1)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4), (h)(1)(i), (h)(1)(ii), (h)(2), (h)(3)(i), (h)(3)(ii), (h)(4), (i)(1)(i), (i)(1)(ii), (i)(2), (i)(3)(i), (i)(3)(ii), and (i)(4) of the NPRM (76 FR 65991, October 25, 2011). The compliance times and the initial inspection and lubrication tasks specified in paragraphs

(g), (h), and (i) of this AD have been consolidated to include the actions in those sub-paragraphs, and to simplify the compliance times. These changes are relieving and allow operators more time to incorporate the requirements of this AD into their maintenance schedules.

These compliance times differ from the compliance times in the referenced service information in that certain compliance times in this AD are based on time after the effective date of this AD. The compliance times in this AD will prevent airplanes from immediately being out of compliance with the AD requirements, because they will prevent grounding an airplane if it has already exceeded the compliance times specified in Boeing Alert Service Bulletins 757-27A0144, and 757-27A0145, both Revision 1, both dated January 20, 2010. The compliance times in this AD have precedence over the compliance times specified in Boeing Alert Service Bulletins 757-27A0144, and 757-27A0145, both Revision 1, both dated January 20, 2010. We have changed paragraphs (g), (h), and (i) of this AD accordingly by including the initial compliance times in revised paragraphs (g)(1), (g)(2), (h)(1), (h)(2), (i)(1), and (i)(2) of this AD. Paragraphs (g)(5), (h)(5), and (i)(5) of the NPRM (76 FR 65991, October 25, 2011), are specified as paragraphs (g)(3), (h)(3), and (i)(3) in this AD. We have clarified the compliance time in paragraph (i)(3)(i) of this AD (paragraph (i)(5)(i) of the NPRM) by revising the compliance time "Before the accumulation of 15,000 total flight hours after accomplishing an overhaul * * *" to specify "Within 15,000 flight hours after accomplishing an overhaul * * *."

Request To Provide Clarification of Freeplay Measurement

Boeing asked that we clarify the freeplay measurement language in the "Differences" section and paragraph (k) of the NPRM (76 FR 65991, October 25, 2011) to avoid misinterpretation by operators. Boeing stated that 0.001 inch of freeplay is sufficient to verify that the ballnut rolling elements are free and there is room for grease action. Boeing added that page 704 of the supplier Component Maintenance Manual (CMM) 27-41-10, specifies that axial lash of 0.002 to 0.006 inch is acceptable for assembly at overhaul. Boeing noted that that some margin of error on the low side of 0.002 inch is necessary to avoid unwarranted removal of units built to the low limit of tolerance, in addition to clarifying that there is a high limit (0.016 inch) as well as a low limit (0.001 inch). Boeing concluded that the

acceptable range specified in paragraph (k) of the NPRM could be interpreted as 0.002 to 0.006 inch, which is not what was intended.

We agree with the request to clarify the freeplay measurement requirement, for the reasons provided. We have changed paragraph (k) of this AD accordingly. However, since the "Differences" section of the preamble does not reappear in the final rule, no change to the AD is necessary in this regard.

Request To Remove Certain Language From Paragraph (l) of the NPRM (76 FR 65991, October 25, 2011)

A4A, on behalf of its member AAL, asked that the language "hard time replacement program" be removed from the credit language specified in paragraph (l) of the NPRM (76 FR 65991, October 25, 2011). AAL stated that paragraph (l) of the NPRM provides credit for installation of new or overhauled HSTAs, but added that the quoted language could limit that credit. AAL noted that paragraph (l) of the NPRM specifies that the overhaul, when conducted as part of a hard time replacement program "meets the intent of one detailed inspection, one freeplay inspection, and one lubrication of the HSTA." AAL stated that any overhaul that includes removal of the HSTA, and overhaul of the stabilizer ballscrew that are done in accordance with the instructions in the original equipment manufacturer CMM, should meet the intent of the subject actions, regardless of whether the overhaul is done as part of a "hard time replacement program." AAL added that all overhauls, regardless of the reasons for removal, would meet the proposed requirements.

We agree with the request for the reasons provided. We have removed the subject language from paragraph (l) of this AD accordingly.

Request To Remove Note 1 of the NPRM (76 FR 65991, October 25, 2011)

UPS asked that Note 1 of the NPRM (76 FR 65991, October 25, 2011) be removed because it serves no practical purpose. UPS stated that this note provides additional guidance for verification of the measurement in Subject 27-41-10, "Stabilizer Trim Ballscrew Freeplay," of Chapter 27, "Flight Controls," of the Boeing 757 Airplane Maintenance Manual (AMM), Revision 101, dated May 20, 2011. UPS added that, if this note refers to the measurement in paragraph (k) of the NPRM, it should also refer to CMM 27-41-05 for HSTA guidance for the 0.002 inch measurement.

We disagree with the request. The reference to Subject 27-41-10, "Stabilizer Trim Ballscrew Freeplay," of Chapter 27, "Flight Controls," of the Boeing 757 Airplane Maintenance Manual (AMM), Revision 101, dated May 20, 2011, is correct. The guidance in Note 1 of this AD refers maintenance personnel to the procedures that verify the measurement was not made in error when the ballnut freeplay measurement is less than the measurement required by the AD. We have made no change to the AD in this regard.

Request To Correct Grammatical Errors

Boeing asked that we correct grammatical errors in the "Differences" and "Relevant Service Information" sections and paragraph (k) of the NPRM (76 FR 65991, October 25, 2011). Boeing stated that the word "then" was used instead of "than."

We agree for the reason provided. We have changed the error in paragraph (k) of this AD; however, since the "Differences" and "Relevant Service Information" sections of the preamble do not reappear in the final rule, no change to the AD is necessary in this regard.

Request To Revise Cost Estimate

AAL asked that the cost estimate provided in the NPRM (76 FR 65991, October 25, 2011) be increased. AAL stated that the 13 work-hours specified in the "Costs of Compliance" section of the NPRM only include the time for initial accomplishment of the required actions. AAL added that the work-hours necessary for the repetitive actions are not included.

We agree that the economic analysis in the NPRM (76 FR 65991, October 25, 2011) did not include the cost of the work-hours necessary for the repetitive actions. We have changed the "Costs of Compliance" section below to include those work-hours.

Request To Remove Reference to AMM

A4A, on behalf of its member UPS, requested that we revise paragraph (j) of the NPRM (76 FR 65991, October 25, 2011) to remove reference to the AMM. UPS stated that, by referring to a specific revision of the AMM, operators would have to request an alternative method of compliance (AMOC) in order to use any later revisions of the AMM. UPS also suggested that Boeing revise Boeing Alert Service Bulletin 757-27A0144, Revision 1, dated January 2010, to include replacement procedures, and that we refer to that revised service bulletin.

We do not agree to revise paragraph (j) of this AD. We do not consider that

delaying this action until after the manufacturer revises the service bulletin is warranted, since operators can accomplish the actions in accordance with the AMM. We also cannot use the phrase, "or later FAA-approved revisions," in an AD when referring to the service document because doing so violates Office of the Federal Register (OFR) regulations for approval of materials "incorporated by reference" in rules. See paragraph (f) of section 51.1 of the Code of Federal Regulations (1 CFR 51.1(f)).

To allow operators to use later revisions of the referenced document (issued after publication of the AD), either we must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an alternative method of compliance with this AD under the provisions of paragraph (n) of this AD. We have not changed this AD in this regard.

Request To Allow Credit for Certain Actions

A4A, on behalf of its member UPS, requested that we revise the NPRM (76 FR 65991, October 25, 2011) to allow credit for actions accomplished per the Boeing maintenance review board report/maintenance planning document (MRBR/MPD). UPS noted that these documents refer to the same AMM sections and tasks specified in Boeing Alert Service Bulletin 757-27A0144, Revision 1, dated January 20, 2010. UPS stated that an operator that performs actions following its maintenance program is not allowed credit for accomplishment of the task, and that the next required inspection should be done in accordance with the compliance times specified in Boeing Alert Service Bulletin 757-27A0144, Revision 1, dated January 20, 2010.

As stated previously, we have revised the compliance times in this AD so that the times do not depend on whether actions were done in accordance with Boeing Alert Service Bulletin 757-27A0144, Revision 1, dated January 20, 2010. Therefore, operators that did actions using the MRBR/MPD have the same initial compliance times as operators that did actions using Boeing Alert Service Bulletin 757-27A0144, Revision 1, dated January 20, 2010. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes

will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 730 airplanes of U.S. registry. We also estimate that it takes about 13 work-hours per inspection, lubrication and measurement cycle per product to comply with this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$806,650, or \$1,105 per product, per inspection, lubrication, and measurement cycle.

We estimate that it takes about 26 work-hours to do any HSTA replacement required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this replacement to the U.S. operators to be \$2,210 per product, excluding parts costs, which vary depending on airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(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),

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012-16-16 The Boeing Company:
Amendment 39-17163; Docket No. FAA-2011-1093; Directorate Identifier 2010-NM-149-AD.

(a) Effective Date

This AD is effective September 26, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 757-200, -200PF, -200CB, and -300 series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 27: Flight Controls.

(e) Unsafe Condition

This AD was prompted by a report of extensive corrosion of the ballscrew of the drive mechanism of the horizontal stabilizer trim actuator (HSTA). We are issuing this AD to prevent undetected failure of the primary and secondary load paths for the ballscrew in the horizontal stabilizer, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

(f) Compliance

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

(g) Group 1, Configuration 1 Airplanes—Repetitive Inspections, Lubrications, Freeplay Checks

For Group 1, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 757-27A0144 (for Model 757-200, -200CB, and 200PF series airplanes) or 757-27A0145 (for Model 757-300 series airplanes), both Revision 1, both dated January 20, 2010, that have accumulated 15,000 total flight hours or fewer as of the effective date of this AD: Do the actions required by paragraphs (g)(1), (g)(2), and (g)(3) of this AD, at the times specified in those paragraphs, and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757-27A0144 (for Model 757-200, -200CB, and -200PF series airplanes) or 757-27A0145 (for Model 757-300 series airplanes), both Revision 1, both dated January 20, 2010.

(1) Within 3,500 flight hours or 2 years after the effective date of this AD, whichever occurs first: Do a detailed inspection for discrepancies of the horizontal stabilizer ballscrew assembly. Repeat the inspection thereafter at intervals not to exceed 3,500 flight hours or 2 years, whichever occurs first.

(2) Within 2,000 flight hours or 1 year after the effective date of this AD, whichever occurs first: Lubricate the horizontal stabilizer trim control system. Repeat the lubrication thereafter at intervals not to exceed 2,000 flight hours or 1 year, whichever occurs first.

(3) Do the stabilizer ballscrew to ballnut freeplay check for discrepancies at the later of the times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD. Repeat the freeplay check thereafter at intervals not to exceed 18,000 flight hours or 5 years, whichever occurs first.

(i) Before the accumulation of 15,000 total flight hours.

(ii) Within 18 months after the effective date of this AD.

(h) Group 1, Configuration 2 Airplanes—Repetitive Inspections, Lubrications, Freeplay Checks

For Group 1, Configuration 2 airplanes identified in Boeing Alert Service Bulletin 757-27A0144 (for Model 757-200, -200CB, and 200PF series airplanes) or 757-27A0145 (for Model 757-300 series airplanes), both Revision 1, both dated January 20, 2010, that have accumulated more than 15,000 total flight hours as of the effective date of this AD: Do the actions required by paragraphs (h)(1), (h)(2), and (h)(3) of this AD, at the times specified in those paragraphs, and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757-27A0144 (for Model 757-200, -200CB, and 200PF series airplanes) or 757-27A0145 (for Model 757-300 series airplanes), both Revision 1, both dated January 20, 2010.

(1) Within 3,500 flight hours or 18 months after the effective date of this AD, whichever occurs first: Do a detailed inspection for discrepancies of the horizontal stabilizer ballscrew assembly. Repeat the inspection thereafter at intervals not to exceed 3,500 flight hours or 2 years, whichever occurs first.

(2) Within 2,000 flight hours or 1 year after the effective date of this AD, whichever

occurs first: Lubricate the horizontal stabilizer trim control system. Repeat the lubrication thereafter at intervals not to exceed 2,000 flight hours or 1 year, whichever occurs first.

(3) Do the stabilizer ballscrew to ballnut freeplay check for discrepancies within 18 months after the effective date of this AD. Repeat the freeplay check thereafter at intervals not to exceed 18,000 flight hours or 5 years, whichever occurs first.

(i) Group 1, Configuration 3 Airplanes—Repetitive Inspections, Lubrications, Freeplay Checks

For Group 1, Configuration 3 airplanes identified in Boeing Alert Service Bulletin 757–27A0144 (for Model 757–200, –200CB, and 200PF series airplanes) or 757–27A0145 (for Model 757–300 series airplanes), both Revision 1, both dated January 20, 2010: Do the actions required by paragraphs (i)(1), (i)(2), and (i)(3) of this AD, at the time specified in those paragraphs, and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0144 (for Model 757–200, –200CB, and –200PF series airplanes) or 757–27A0145 (for Model 757–300 series airplanes), both Revision 1, both dated January 20, 2010.

(1) Within 3,500 flight hours or 2 years after the effective date of this AD, whichever occurs first: Do a detailed inspection for discrepancies of the stabilizer ballscrew assembly. Repeat the inspection thereafter at intervals not to exceed 3,500 flight hours or 2 years, whichever occurs first.

(2) Within 2,000 flight hours or 1 year after the effective date of this AD, whichever occurs first: Lubricate the horizontal stabilizer trim control system. Repeat the lubrication thereafter at intervals not to exceed 2,000 flight hours or 1 year, whichever occurs first.

(3) Do the stabilizer ballscrew to ballnut freeplay check for discrepancies at the later of the times specified in paragraphs (i)(3)(i) and (i)(3)(ii) of this AD. Repeat the freeplay check thereafter at intervals not to exceed 18,000 flight hours or 5 years, whichever occurs first.

(i) Within 15,000 flight hours after accomplishing an overhaul specified in Boeing Alert Service Bulletin 757–27A0142, Revision 2, dated October 23, 2003 (for Model 757–200, –200CB, and –200PF series airplanes); or Boeing Alert Service Bulletin 757–27A0143, Revision 1, dated October 23, 2003 (for Model 757–300 series airplanes).

(ii) Within 18 months after the effective date of this AD.

(j) Corrective Actions

If any discrepancy is found during any action required by paragraph (g), (h), or (i) of this AD: Before further flight, do the replacement specified in paragraph (j)(1) or (j)(2) of this AD, in accordance with Subject 27–41–10, “Stabilizer Trim Ballscrew Freeplay,” of Chapter 27, “Flight Controls,” of the Boeing 757 Airplane Maintenance Manual (AMM), Revision 101, dated May 20, 2011; except as provided by paragraph (k) of this AD.

(1) Replace the HSTA with a new or overhauled HSTA.

(2) Replace the HSTA with a HSTA that is not new or overhauled on which a detailed inspection, freeplay measurement, and lubrication of that actuator are performed in accordance with paragraph (g), (h), or (i) of this AD, as applicable, and no discrepancies are found during the inspection and freeplay measurement.

(k) No Action Required

No action is required if a freeplay measurement greater than or equal to 0.001 inch but less than 0.016 inch, is found and the measurement is verified to have been performed correctly. This AD requires HSTA replacement, as specified in paragraph (j) of this AD, if a freeplay measurement is less than 0.001 inch, or greater than or equal to 0.016 inch.

Note 1 to paragraph (k) of this AD: Additional guidance for the verification of the measurement can be found in Subject 27–41–10, “Stabilizer Trim Ballscrew Freeplay,” of Chapter 27, “Flight Controls,” of the Boeing 757 AMM, Revision 101, dated May 20, 2011.

(l) Method of Compliance for Replacement of HSTA

Any HSTA overhauled before the effective date of this AD, or within the compliance time specified in paragraph (g), (h), or (i) of this AD, as applicable—that included removal of the HSTA from the airplane and overhaul of the stabilizer ballscrew, as specified in Linear Motion Component Maintenance Manual with Illustrated Parts List, Ball Screw Assembly, Linear Motion Part No. 7820700, Boeing Part No. (S251N201–1), 27–41–10, Revision 3, dated October 2, 2007—meets the intent of one detailed inspection, one freeplay inspection, and one lubrication of the HSTA, as specified in paragraphs (g), (h), and (i) of this AD; and therefore, is considered acceptable for compliance with the initial accomplishment of the actions specified in paragraph (g), (h), or (i) of this AD, as applicable, and the repetitive interval for those actions may be determined from the performance date of that overhaul.

(m) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, a horizontal stabilizer trim actuator that is not new or overhauled, unless a detailed inspection, freeplay measurement, and lubrication of that actuator are performed in accordance with paragraph (g), (h), or (i) of this AD, as applicable, and no discrepancies are found during the inspection and freeplay measurement.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the

Related Information section of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(o) Related Information

For more information about this AD, contact Kenneth Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6468; fax: (425) 917–6590; email: kenneth.frey@faa.gov.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 757–27A0144, Revision 1, dated January 20, 2010.

(ii) Boeing Alert Service Bulletin 757–27A0145, Revision 1, dated January 20, 2010.

(iii) Subject 27–41–10, “Stabilizer Trim Ballscrew Freeplay,” of Chapter 27, “Flight Controls,” of the Boeing 757 Airplane Maintenance Manual, Revision 101, dated May 20, 2011.

(iv) Linear Motion Component Maintenance Manual with Illustrated Parts List, Ball Screw Assembly, Linear Motion Part No. 7820700, Boeing Part No. (S251N201–1), 27–41–10, Revision 3, dated October 2, 2007.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet <https://www.myboeingfleet.com>.

(4) For Linear Motion service information identified in this AD, contact Linear Motion LLC, 628 North Hamilton Street, Saginaw, Michigan 48602; phone: (989) 759–8300; Internet: <http://www.thomsonaerospace.com>.

(5) You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/index.html>.

Issued in Renton, Washington, on August 10, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20265 Filed 8–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2012-0177; Directorate Identifier 2009-SW-59-AD; Amendment 39-17149; AD 2012-16-02]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter France Model EC155B and EC155B1 helicopters with a VIP 4-seat bench to require revising the Limitations section of the Rotorcraft Flight Manual (RFM) and converting the VIP 4-seat bench into a 3-seat configuration. This AD was prompted by the determination that the load strength of the seat attachment hardware of the seat installation does not meet certification specifications. The required actions are intended to prevent overloading of the seat structure at the attachment point during a hard landing or emergency landing, which could result in the VIP 4-seat bench detaching from the floor and subsequent injury to the seat occupants.

DATES: This AD is effective September 26, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 26, 2012.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, Texas 75052, telephone (972) 641-0000 or (800) 232-0323, fax (972) 641-3775, or at <http://www.eurocopter.com/techpub>. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800-647-5527) is U.S. Department of

Transportation, Docket Operations Office, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aerospace Engineer, FAA, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222-5130; fax: (817) 222-5961, email gary.b.roach@faa.gov.

SUPPLEMENTARY INFORMATION:**Discussion**

On February 28, 2012, at 77 FR 11787, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter France Model EC155B and EC155B1 helicopters with a VIP 4-seat bench. That NPRM proposed to require, before further flight, revising the Limitations section of the RFM, and within 15 hours time-in-service (TIS), converting the VIP 4-seat bench into a 3-seat configuration. Instead of revising the Limitations section and converting the VIP 4-seat bench, the NPRM proposed to allow modifying the rear VIP 4-seat bench or the front VIP 4-seat bench by installing shims, which would constitute terminating action for the requirements of this AD. The proposed requirements were intended to prevent overloading of the seat structure at the attachment point during a hard landing or emergency landing, which could result in the VIP 4-seat bench detaching from the floor and subsequent injury to the seat occupants.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2009-0078R1, dated June 30, 2009 (AD No. 2009-0078R1), to correct an unsafe condition for the Eurocopter model EC155B and EC155B1, all serial numbers up to and including 6892, fitted with a VIP 4-seat bench, P/N 365V85-0045-01 or 365V85-0046-01. EASA advises that Eurocopter identified an unsafe condition while performing customization work that involved the installation of the VIP 4-seat bench. During the installation work, Eurocopter determined that the load strength of the seat attachment hardware of the seat installation did not meet certification specifications. EASA advises that this condition, if not corrected, would lead to overloading of the seat structure at the attachment point during an emergency landing, which could result in the seat bench detaching from the floor fitting rails and potentially resulting in injury to the seat occupants.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by the EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

Eurocopter has issued Emergency Alert Service Bulletin (ASB) No. 04A009, Revision 1, dated June 24, 2009 (Emergency ASB No. 04A009R1), which revises Emergency Alert Service Bulletin No. 04A009, Revision 0, dated March 30, 2009 (Emergency ASB No. 04A009R0). Emergency ASB No. 04A009R0 specified revising the RFM to restrict the VIP 4-seat bench to a maximum of 3 occupants and converting the VIP 4-seat bench into a 3-seat bench. EASA classified Emergency ASB No. 04A009R0 as mandatory to ensure the continued airworthiness of these helicopters and issued EASA Emergency AD No. 2009-0078-E, dated April 1, 2009 (Emergency AD No. 2009-0078-E).

Eurocopter has now developed optional terminating actions, and issued Service Bulletin No. 25-095, Revision 0, dated June 25, 2009 (SB No. 25-095), which specifies installing new shims between the attachment rails and the cabin floor at the seat position to strengthen the attachment security of the seat. Eurocopter also issued Emergency ASB No. 04A009R1, which retained the requirements of Emergency ASB No. 04A009R0 and specified that helicopters modified in accordance with SB No. 25-095 had met the requirements of Emergency ASB No. 04A009R1. In response, EASA issued AD No. 2009-0078R1, which retained the requirements of Emergency AD No. 2009-0078-E and added the optional terminating action of modifying the seat configuration to strengthen the attachment security of the seat. EASA AD No. 2009-0078R1 also allows, after installing the bench modification kit,

removal of the RFM limitation of 3 occupants.

Differences Between This AD and the EASA AD

This AD specifies that the conversion of the VIP 4-seat bench to a 3-seat bench must occur within 15 hours TIS, while the EASA AD specifies that compliance must occur within 15 hours TIS or 7 days, whichever occurs first. This AD uses different P/Ns for the bench modification kits, because AD No. 2009-0078R1 and SB No. 25-095 use different P/Ns for the same part, and this AD uses the P/N in SB No. 25-095.

Costs of Compliance

We estimate that this AD will affect 4 helicopters of U.S. registry. We estimate that it will take a negligible amount of work hours per helicopter to amend the Limitation section of the applicable RFM. We estimate it will take approximately 0.25 hour to convert the VIP 4-seat bench to a 3-seat bench at an average labor rate of \$85 per work hour. Estimated labor costs for the conversion are approximately \$21.25 per helicopter, and approximately \$85 for the fleet. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be \$85, assuming that no helicopter has been previously modified with the rear VIP bench seat retrofit kit P/N 365V08-0079-0171 and the front VIP bench seat retrofit kit P/N 365V08-0079-0271.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on

the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (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);
- (3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012-16-02 Eurocopter France:

Amendment 39-17149; Docket No. FAA-2012-0177; Directorate Identifier 2009-SW-59-AD.

(a) Applicability

This AD applies to Model EC155B and EC155B1 helicopters, all serial numbers up to and including 6892, with a VIP 4-seat bench, part number (P/N) 365V85-0045-01 or 365V85-0046-01, installed; certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as possible overloading of the seat structure at the attachment point during a hard landing or emergency landing. This condition could result in the bench seat detaching from the floor and subsequent injury to the seat occupants.

(c) Effective Date

This AD becomes effective September 26, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Before further flight, revise the Limitations section of the Rotorcraft Flight Manual (RFM) by inserting the following statement into the Limitations section: "The VIP 4-seat bench, P/N 365V85-0045-01 or 365V85-0046-01 is limited to 3 passengers." You may make the change to the Limitations section of the RFM in pen and ink, or by inserting a copy of this AD into the Limitations section of the RFM.

(2) Within the next 15 hours time-in-service, convert the VIP 4-seat bench into the 3-seat configuration in accordance with paragraphs 2.B.1 through 2.B.3 and Figure 1 of Eurocopter Emergency Alert Service Bulletin No. 04A009, Revision 1, dated June 24, 2009.

(f) Alternative Actions for Paragraph (e)

Instead of complying with paragraphs (e)(1) and (e)(2) of this AD, you may modify the rear VIP 4-seat bench by installing the shims contained in rear VIP bench seat retrofit kit, P/N 365V08-0079-0171 (which corresponds to modification 365V08-0079-01), or the front VIP 4-seat bench by installing the shims contained in front VIP bench seat retrofit kit, P/N 365V08-0079-0271 (which corresponds to modification 365V08-0079-02), in accordance with the Operational Procedure, paragraph 2.B. of the Eurocopter Service Bulletin No. 25-095, dated June 25, 2009. Modifying the VIP 4-seat bench constitutes terminating action for the requirements of this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aerospace Engineer, FAA, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222-5130; fax: (817) 222-5961, email gary.b.roach@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency AD No. 2009-0078R1, dated June 30, 2009.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2500: Cabin Equipment/Furnishings.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Eurocopter Emergency Alert Service Bulletin No. 04A009, Revision 1, dated June 24, 2009.

(ii) Eurocopter Service Bulletin No. 25-095, dated June 25, 2009.

(3) For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, Texas 75052, telephone (972) 641-0000 or (800) 232-0323, fax (972) 641-3775, or at <http://www.eurocopter.com/techpub>.

(4) You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(5) You may also review copies of this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

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

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012-20342 Filed 8-21-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 400

[Docket No.: FAA-2012-0318; Amdt. No. 400-4]

RIN 2120-AJ84

Voluntary Licensing of Amateur Rocket Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The FAA is amending the scope of its regulations to allow launch operators that conduct certain amateur rocket launches an opportunity to voluntarily apply for a commercial space transportation license or experimental permit.

DATES: Effective October 9, 2012.

Submit comments on or before September 21, 2012. If adverse comment is received, the FAA will publish a timely withdrawal in the **Federal Register**.

ADDRESSES: You may send comments identified by docket number FAA-2012-0318 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Shirley McBride, Senior Transportation Industry Analyst, Regulations and Analysis Division, AST-300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7470; facsimile (202) 267-5463; email Shirley.McBride@faa.gov.

For legal questions, contact Laura Montgomery, Senior Attorney for Commercial Space Transportation, Office of the Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3150; facsimile (202) 267-7971, email laura.montgomery@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on commercial space transportation safety is found in Title 49 of the United States Codes, section 322(a), which authorizes the Secretary of Transportation to carry out Subtitle V, Chapter 509, 51 U.S.C. 50901-50923, popularly referred to as the Commercial Space Launch Act or the CSLA. The CSLA authorizes the Department of Transportation (DOT) and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 51 U.S.C. 50904, 50905. The CSLA directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 51 U.S.C. 50905. The FAA is also responsible for encouraging, facilitating, and promoting commercial space launches by the private sector. 51 U.S.C. 50903.

Direct Final Rule Procedure

A direct final rule is a quicker way to issue rules that are not controversial. It is based on the Administrative Procedure Act's good cause exception to notice and comment procedures. 5 U.S.C. 553. We use this exception where we have found the public comment procedures to be unnecessary because we do not expect to receive adverse comment. It involves publishing a rule in the **Federal Register** with a statement that, unless we receive an adverse comment on the rule (or a notice of intent to file an adverse comment) within the comment period, the rule will become effective on a specified date. Normally, the effective date of a direct final rule is at least 30 calendar days after the end of the comment period.

Adverse Comment

An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. In determining whether an adverse comment is significant enough to end a rulemaking, we consider whether the comment raises an issue that would warrant a substantive response in a notice of proposed rulemaking (NPRM).

If we do not receive an adverse comment (or notice of intent to file an adverse comment), we publish a confirmation document in the **Federal Register**, generally within 30 calendar days after the comment period closes.

The confirmation document tells the public the effective date of the direct final rule.

If we do receive an adverse comment (or notice of intent to file an adverse comment), we publish a Notice of Withdrawal in the **Federal Register** before the effective date of the direct final rule. The document may withdraw the direct final rule in whole or in part. We may incorporate the commenter's recommendation into another direct final rule or we may publish an NPRM.

The Direct Final Rule

The FAA anticipates that this regulation will not result in adverse or negative comment since its application is strictly voluntary. Therefore, the agency is issuing it as a direct final rule. This rule allows an operator of a Class 3¹ amateur rocket² to voluntarily apply for a license or experimental permit under chapter III. Because these applications are purely voluntary, there should be no adverse effects of this rule. Operators of Class 3 amateur rockets who do not wish to apply for a license or permit need not do so. Such operators would continue to operate as they do now under part 101.

Comments Invited

The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule. The most helpful comments reference a specific portion of the document, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if filing comments electronically, please submit your comments only one time.

The FAA will file all comments we receive in the docket, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Before acting on this direct final rule, the FAA will consider all comments received on or before the closing date for comments. The agency

will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this direct final rule in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. Mark the information that is considered proprietary or confidential. If the information is on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. The FAA holds it in a separate file to which the public does not have access, and the agency places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, the FAA treats it as any other request under the Freedom of Information Act, 5 U.S.C. 552. The FAA processes such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- (1) Searching the Federal eRulemaking portal at <http://www.regulations.gov>;
- (2) Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies/; or
- (3) Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket and amendment numbers of this rulemaking.

Background

Currently, the FAA's commercial space regulations specify that the requirements in chapter III do not apply to amateur rockets activities. This direct final rule amends § 400.2 of chapter III to allow operators of Class 3 amateur rockets to voluntarily apply to the FAA for a license or experimental permit.

Chapter III contains the requirements that apply to commercial space transportation activities conducted in the United States or by a United States citizen. Section 400.2 (Scope) states that the requirements of chapter III do not apply to amateur rocket activities. Section 1.1 of chapter I defines an amateur rocket as an unmanned rocket propelled by a motor or motors having a combined total impulse of 889,600 Newton-seconds (200,000 pound-seconds) or less; and cannot reach an altitude greater than 150 kilometers (93.2 statute miles) above the earth's surface.

In 2008, the FAA amended its regulations governing amateur rocket activities to create three separate classes of amateur rockets.³

- *Class 1 Model Rocket*—Uses no more than 125 grams (4.4 ounces) of propellant; uses a slow-burning propellant; is made of paper, wood, or breakable plastic; contains no substantial metal parts; and weighs no more than 1,500 grams (53 ounces), including the propellant.
- *Class 2 High-Power Rocket*—An amateur rocket other than a model rocket that is propelled by a motor or motors having a combined total impulse of 40,960 Newton-seconds (9,208 pound-seconds) or less.
- *Class 3 Advanced High-Power Rocket*—An amateur rocket other than a model rocket or high-powered rocket.

On May 26, 2011, The National Aeronautics and Space Administration (NASA) issued Release 11-170,⁴ which sought proposals for services from commercial suborbital flight providers and others to support the agency's Flight Opportunities Program. This program combines NASA's Facilitated Access to the Space Environment for Technology and Commercial Reusable Suborbital Research efforts.

On August 9, 2011, NASA issued Release 11-258⁵ in which it selected seven companies to support its Flight Opportunities Program through launches to near space. In order for the financial responsibility requirements of the CSLA⁶ to apply, NASA has required these operators to be licensed by the FAA. The suborbital launches under the NASA program typically involve smaller launch vehicles, some of whose launches would satisfy the amateur rocket definition, and thus would fall

³ See 14 CFR 101.22.

⁴ NASA Calls for Commercial Suborbital Flight Services Proposals, Release 11-170.

⁵ NASA Selects Seven Firms To Provide Near-Space Flight Services, Release 11-258.

⁶ 51 U.S.C. 50914—Liability Insurance and Financial Responsibility requirements.

¹ Class 3 as defined by § 101.22.

² Amateur rocket as defined by § 1.1.

outside the scope of the FAA's space transportation regulations in chapter III.

At least one amateur rocket operator has sought to obtain an FAA license. The operator said it will not change its operational profile to otherwise fall within the authority of chapter III regulations. Without a rulemaking, the FAA may not entertain applications for the licensing or permitting of amateur rocket activities.⁷

The CSLA provides that the United States should encourage private sector launches, reentries, and associated services and, only to the extent necessary, regulate those launches to ensure compliance with international obligations of the United States and to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States.⁸ Thus, because a license is necessary for a launch operator to be eligible for the NASA program, it is appropriate to issue this direct final rule to allow operators of specified amateur rockets to voluntarily submit an application for a chapter III license or experimental permit.⁹

This direct final rule amends § 400.2 to allow operators of Class 3 amateur rockets to voluntarily apply to the FAA for a license or permit.

New Requirements

To accommodate NASA's interest in funding only licensed launches, the FAA will allow launches of sufficient size to voluntarily apply for an FAA license and, therefore, fall under the financial responsibility requirements of the CSLA. The changes do not apply to launches involving a Class 1 or Class 2 amateur rocket. Instead, they only apply to launch activities related to a Class 3 amateur rocket. The FAA will not solicit such applications, because solicitation would call into question whether the application was, in fact, voluntary.

Also, this rule only permits voluntary applications for a license from entities that are not part of the U.S. Government. The CSLA does not apply to activities the U.S. Government conducts for the government, which means the FAA does not have the authority to consider even voluntary applications for a license from other Federal agencies.¹⁰

Further, a prospective applicant must keep in mind that once it applies for

and accepts an FAA license or permit, part 101 will not apply and the requirements of chapter III will apply to and govern its operations. These requirements govern not only the operational safety requirements of chapter III, but also requirements applicable to financial responsibility, the signing of reciprocal waivers of claims, environmental impacts, and civil penalties.

Paperwork Reduction Act

Information collection requirements in the amendment to the Commercial Space Transportation Licensing Regulations have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and assigned OMB Control Number 2120-0608. This final rule allows launch operators that conduct certain amateur rockets launches an opportunity to voluntarily apply for a commercial space transportation license or experimental permit.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this direct final rule. We suggest readers seeking greater

detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs

The FAA does not require licensing of amateur rocket operators, who may continue to operate as before, without incurring the cost of obtaining a license. The FAA notes that an operator's customers, including other agencies such as NASA, may require a license for an amateur rocket operator who wishes to provide launch services or to participate in programs, such as NASA's Flight Opportunities Program. Since this license is not an FAA requirement, the FAA attributes the costs of operator compliance to the customer, not to this rule. Whenever a license or permit is issued, the FAA will incur a cost to produce the authorization. Operators who choose to obtain a license under this rule will also incur costs although we do not attribute these costs to the rule, because they are voluntary.

The estimated cost associated with issuing licenses and experimental permits under this rule is \$1.8 million (\$1.5 million present value using a 7 percent discount rate and \$ 1.7 million present value using a 3 percent discount rate) over 5 years for the cost to the government. Operator benefits are expected to equal or exceed their costs. The FAA is not able to quantify other societal benefits of this rule. To the extent the licensing requirements provide a societal benefit, those benefits, including any reduction in risk, may attend this rule. Those benefits are not quantifiable for launch vehicles of this size, but the benefits are present.

Who is potentially affected by this rule?

- Launch operators who would like to launch amateur rocket vehicles under a license or permit
- Customers, including NASA
- FAA

⁷ *Allentown Mack Sales & Serv. v. NLRB*, 522 U.S. 359, 373-74 (1998); *United States v. Nixon*, 418 U.S. 683, 695-96 (1974); *Nat'l Family Planning & Reprod. Health Ass'n v. Sullivan*, 979 F.2d 227, 235-41 (D.C. Cir. 1992).

⁸ 51 U.S.C. 50901(a)(7), 50903(b).

⁹ Although NASA does not require a permit, the FAA sees no need to distinguish between the two authorizations.

¹⁰ 51 U.S.C. 50919(g).

Assumptions

- All monetary values are expressed in 2011 dollars.
- The time horizon for the analysis is 5 years because this time period captures all of the relevant costs.

- Present value costs are estimated at 7 percent and 3 percent.
- Hourly burdened government rate is \$51.72.
- Ten operator licenses for amateur rocket launches will be issued over the first 5 years.¹¹

- Operator licenses for reusable launch vehicles are valid for 2 years.
- Operators will begin license renewal process for each license the second year of the license.

Year	1	2	3	4	5	Total
# of Original Licenses	1	2	2	2	3	10
# of Renewals	0	1	2	3	4	10

Issuance of Amateur Rocket Launch Licenses Over Time

- Operators will renew with amendments to include additional configurations.
- Cost of these renewals will be 70 percent of the cost of the original license because configurations will be expanded beyond original license.
- There will be multiple launches per year.
- We assume amateur rocket operators who choose to obtain a license will decide to launch from a licensed launch site which will already have a completed environmental review or which will have a government grant for preparing an environmental review. This would result in minimal costs.

Benefits

Because the rule is voluntary, the FAA does not require amateur operators to obtain a license. Amateur rocket operators will choose to obtain an FAA license in order to launch rockets only if their expected benefits exceed their costs. An operator will seek a license only if the costs of obtaining a license are worth it. Any benefit to the operator associated with having a license will be realized only after an operator has incurred the cost of obtaining a license. This rule encourages rocket launches, which is consistent with the FAA mission. The FAA is not able to quantify other societal benefits of this rule, other

than to note the expected benefits exceed the expected costs.

Costs Associated With Licenses

Although the FAA does not attribute such costs to this rule, the FAA notes that amateur rocket operators would incur costs to submit the data and analyses to the FAA for a license or experimental permit and for the cost of third party liability insurance. Assuming 10 licenses are issued in the first 5 years, operators will voluntarily expend a total of \$2 million (\$1.66 million present value using a 7 percent discount rate and \$ 1.85 million present value using a 3 percent discount rate) over 5 years for licenses. These costs are presented in the table below:

Table 1 – Cost voluntarily incurred by operators

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Launch License Forecast	1	2	2	2	3	10
Renewal Forecast		1	2	3	4	10
Total # of Licenses	1	3	5	7	10	
Average # of launches per license	5	8	10	12	14	
Total # of Launches	5	24	50	84	140	
7% Discount Rate	1	0.9346	0.8734	0.8163	0.7629	
3% Discount Rate	1	0.9709	0.9426	0.9151	0.8885	
Launch License cost	\$65,000	\$130,000	\$130,000	\$130,000	\$195,000	\$650,000
Renewal Costs	\$0	\$45,500	\$91,000	\$136,500	\$182,000	\$455,000
Insurance Costs	\$15,000	\$72,000	\$150,000	\$252,000	\$420,000	\$909,000
Total Costs	\$80,000	\$247,500	\$371,000	\$518,500	\$797,000	\$2,014,000
Discounted by 7%	\$80,000	\$231,000	\$324,000	\$423,000	\$608,000	\$1,666,000
Discounted by 3%	\$80,000	\$240,000	\$350,000	\$474,000	\$708,000	\$1,852,000

The FAA would incur the cost of reviewing and processing the materials that the operators submit for a license or

experimental permit. These costs are presented in the table below:

¹¹NASA's Flight Opportunities Program (FOP) has awarded contracts to seven operators. We find it reasonable to assume that in the first 2 years after the rule publishes, three amateur rocket licenses

will be granted. Two more amateur rocket operators not involved with the FOP have inquired into the possibility of obtaining voluntary licenses for research and development and demonstration

launches. It is reasonable to estimate that the FAA could issue up to 10 amateur rocket licenses in the first 5 years.

Table 2 – Costs to FAA

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Launch License Forecast	1	2	2	2	3	10
Renewal Forecast		1	2	3	4	10
7% Discount Rate	1	0.9346	0.8734	0.8163	0.7629	
3% Discount Rate	1	0.9709	0.9426	0.9151	0.8885	
Cost to Review and Process Original Launch Licenses	\$108,000	\$215,000	\$215,000	\$215,000	\$323,000	\$1,076,000
Cost to Review and Process Renewals	\$0	\$75,000	\$151,000	\$226,000	\$301,000	\$753,000
Total Costs	\$108,000	\$290,000	\$366,000	\$441,000	\$624,000	\$1,829,000
Discounted by 7%	\$108,000	\$271,000	\$320,000	\$360,000	\$476,000	\$1,535,000
Discounted by 3%	\$108,000	\$282,000	\$345,000	\$404,000	\$554,000	\$1,693,000

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this final rule will not have a significant impact on a substantial number of entities for the following reasons: The rule is voluntary and does not create costs on operators. Also, operators of amateur rockets would not willingly obtain licenses or experimental permits if the costs were to exceed the expected benefits.

Therefore, as the Acting FAA Administrator, I certify that this rule will not have a significant economic

impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore will not create unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This direct final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d, governing rulemakings such as this, and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 18, 2001). We have determined that it is not a “significant energy action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 400

Commercial space transportation, Licensing, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter III of Title 14, Code of Federal Regulations as follows:

PART 400—BASIS AND SCOPE

■ 1. The authority citation for part 400 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 2. Revise § 400.2 to read as follows:

§ 400.2 Scope.

These regulations set forth the procedures and requirements applicable to the authorization and supervision under 51 U.S.C. Subtitle V, chapter 509, of commercial space transportation activities conducted in the United States or by a U.S. citizen. The regulations in this chapter do not apply to—

(a) Space activities carried out by the United States Government on behalf of the United States Government; or

(b) The launch of an amateur rocket as defined in § 1.1 of chapter I unless—

(1) The rocket is a Class 3 advanced high-power rocket as defined in § 101.22 of chapter I; and

(2) The operator of the Class 3 advanced high-power rocket voluntarily submits an application for a license or a permit.

Issued in Washington, DC, on July 31, 2012.

Michael P. Huerta,
Acting Administrator.

[FR Doc. 2012–20671 Filed 8–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. FDA–2012–N–0205]

Agreements and Memoranda of Understanding Between the Food and Drug Administration and Other Departments, Agencies, and Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule makes technical changes that will update a requirement that many of the written agreements and memoranda of understanding (MOUs) between the Food and Drug Administration (FDA) and other departments, Agencies, and organizations be published in the

Federal Register. Because we already post and will continue to post our ongoing agreements and MOUs with other departments, Agencies, and organizations on our Web site upon their completion, this requirement is no longer necessary. This final rule, accordingly, eliminates it. We are making these technical changes to conserve Agency time and resources, reduce government paperwork, and eliminate unnecessary **Federal Register** printing costs while continuing to afford public access to these documents.

DATES: This rule is effective October 22, 2012.

FOR FURTHER INFORMATION CONTACT:

Daniel W. Sigelman, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4706, FAX: 301–847–8616, daniel.sigelman@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Procedure

In the **Federal Register** of March 23, 2012 (77 FR 16923), FDA published a direct final rule to eliminate the requirement that many of our written agreements and MOUs with other departments, Agencies, and organizations be published in the **Federal Register**. We explained that we issued this rule as a direct final rule because we believed it was noncontroversial and did not anticipate receiving significant adverse comments. We concurrently published in the **Federal Register** of March 23, 2012 (77 FR 16971) a companion proposed rule, substantively identical to the direct final rule, that provided a procedural framework from which to proceed with standard notice-and-comment rulemaking in the event we were required to withdraw the direct final rule because of significant adverse comments. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. Any comments received under the companion proposed rule were treated as comments regarding the direct final rule and vice versa. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466). This guidance document may be accessed at <http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm>.

We received one comment on the proposed rule, which we considered significantly adverse. Therefore, in the **Federal Register** of June 27, 2012 (77 FR 38173), we withdrew the direct final rule. This final rule summarizes and responds to this comment on the direct final rule and proposed rule. See section IV of this document for a discussion of the comment and FDA's response.

II. Background

In the **Federal Register** of October 3, 1974 (39 FR 35697), we announced that copies of all our MOUs transacted with government Agencies and nongovernment organizations were available for public review at our offices during working hours and would be published in the **Federal Register**. We subsequently codified this policy in the **Federal Register** of December 24, 1974 (39 FR 44602 at 44651) and recodified it where it currently appears at § 20.108 (21 CFR 20.108) in the **Federal Register** of March 22, 1977 (42 FR 15616 at 15625).

Consumers, industry, professional groups, associations, educators, and other government Agencies had manifested widespread interest in the texts of these MOUs. The intent of § 20.108 was to promote transparency by providing access to these stakeholders.

III. Summary of the Final Rule

This final rule will eliminate the requirement in current § 20.108(c) that our agreements and MOUs with other departments, Agencies, and organizations be published in the **Federal Register** on an individual basis and instead will require that they be posted on our Web site as completed. We increasingly rely on Internet-based communications to ensure and promote transparency in our operations and activities. So it is with this final rule, which merely recognizes and codifies our already established practice of making our ongoing agreements and MOUs with other departments, Agencies, and organizations publicly available on our Web site. At the time of this writing, each such publicly disclosable agreement and MOU can be accessed at one of the following three FDA Web site locations: <http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/DomesticMOUs/default.htm>; <http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/AcademiaMOUs/default.htm>; or <http://www.fda.gov/AboutFDA/PartnershipsCollaborations/>

Memoranda of Understanding MOUs/ Other MOUs/default.htm.

Because all publicly disclosable agreements and MOUs are posted on our Web site, it is no longer necessary to require, as does current § 20.108(b), that a permanent file of them be available for public review during working hours in the Agency's Freedom of Information Public Reading Room. Accordingly, this rule will revise current § 20.108(b).

The public's access to an FDA Web site that is regularly updated to include agreements and MOUs as they are completed has already greatly enhanced the speed, ease, and convenience with which stakeholders can obtain and review these documents.

The rule's technical changes will lessen demands on the time of our staff and reduce the government paperwork and printing costs associated with **Federal Register** publication of newly completed agreements and MOUs with other departments, Agencies, and organizations. At the same time, it will continue to ensure, consistent with the underlying intent of § 20.108, the accessibility of records of widespread interest to consumers, industry, professional groups, associations, educators, and other government Agencies.

Currently, § 20.108(c) treats our cooperative work-sharing agreements with State or local government Agencies differently from our agreements and MOUs with other Agencies and organizations. Because these cooperative work-sharing agreements rarely vary significantly from one another, we decided against publishing their full texts in the **Federal Register** (51 FR 19851; June 3, 1986). Instead, since 1993, we have merely required them to be listed at least once every 2 years in the **Federal Register** (58 FR 48794; September 20, 1993). This final rule will end such disparate treatment. Revised § 20.108(b) will apply to all of our written agreements and MOUs with other departments, Agencies, and organizations, including cooperative work-sharing agreements with State or local government Agencies, except for signed agreements and MOUs relating to activities of our Office of Criminal Investigations, which are addressed in § 20.108(d), which will be revised and redesignated as § 20.108(c).

This final rule does not amend § 20.108(a) (stating that our written agreements and MOUs are available for public disclosure).

IV. Comment on the Proposed Rule and FDA's Response

We received one comment on the proposed rule. A summary of that comment and FDA's response follow.

(Comment 1) While acknowledging "FDA's efforts to reduce printing costs associated with publication of newly completed" agreements and MOUs, the comment urged that such documents be published in full in the **Federal Register**, as they constitute "vital aspects of FDA's mission," and the **Federal Register** has been designated as the one place where important governmental actions can be found. The comment maintained that the **Federal Register** embodies a permanently available historical record providing potentially necessary details for recreating Agency thinking or policy at a given time. By contrast, the comment continued, FDA removes obsolete documents from its Web site as it continuously updates it, thereby rendering that Web site unreliable as an Agency historical record. It additionally contended that on numerous occasions when FDA has updated its Web site, information has become difficult to find or links no longer connect to appropriate Web site pages.

(Response) We believe that the burden and costs imposed by **Federal Register** publication of agreements and MOUs, which include not only the printing costs acknowledged by the comment, but also the time of FDA staff and associated government paperwork, outweigh any arguable interest in reproducing these documents in their entirety in the **Federal Register**. To the extent that any of these documents are eventually no longer accessible on FDA's Web site, they, like numerous other significant documents that are not reprinted in the **Federal Register**, constitute permanent Agency records required to be archived and made available to the public on request.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is

not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule does not impose any significant costs, we certify that it will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is \$139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. We do not expect this rule to result in any 1-year expenditure that would meet or exceed this amount.

VI. Paperwork Reduction Act of 1995

We have concluded that this final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VII. Environmental Impact

We have determined under 21 CFR 25.33 that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that this final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that this final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

■ 1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 2. Section 20.108 is amended as follows:

- a. Revise paragraph (b);
- b. Remove paragraph (c);
- c. Redesignate paragraph (d) as paragraph (c);
- d. Revise newly redesignated paragraph (c).

The revisions read as follows:

§ 20.108 Agreements between the Food and Drug Administration and other departments, agencies, and organizations.

* * * * *

(b) All written agreements and memoranda of understanding between FDA and any entity, including, but not limited to other departments, Agencies, and organizations will be made available through the Food and Drug Administration Web site at <http://www.fda.gov> once finalized.

(c) Agreements and understandings signed by officials of FDA with respect to activities of the Office of Criminal Investigations are exempt from the requirements set forth in paragraph (b) of this section. Although such agreements and understandings will not be made available through the FDA Web site, these agreements will be available for disclosure in response to a request from the public after deletion of information that would disclose confidential investigative techniques or procedures, or information that would disclose guidelines for law enforcement investigations if such disclosure could reasonably be expected to risk circumvention of the law.

Dated: August 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20610 Filed 8–21–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 500**

[Docket No. FDA–2010–N–0612]

Animal Drugs, Feeds, and Related Products; Regulation of Carcinogenic Compounds in Food-Producing Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations regarding compounds of carcinogenic concern used in food-producing animals. Specifically, the Agency is clarifying the definition of “S_o” and revising the definition of “S_m” so that it conforms to the clarified definition of S_o. Other clarifying and conforming changes are also being made.

DATES: This rule is effective September 21, 2012.

FOR FURTHER INFORMATION CONTACT:

Kevin Greenlees, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8214, email: kevin.greenlees@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On December 20, 2010, FDA issued a proposed rule (75 FR 79320) to amend its regulations regarding compounds of carcinogenic concern used in food-producing animals. Specifically, the Agency clarified the definition of “S_o” and revised the definition of “S_m” so that it would conform to the clarified definition of S_o. The Agency also proposed a number of clarifying and conforming changes.

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) contains three anticancer, or Delaney, clauses: Sections 409(c)(3)(A), 512(d)(1)(I), and 721(b)(5)(B)(i) (21 U.S.C. 348(c)(3)(A), 360b(d)(1)(I), and 379e(b)(5)(B)(i)), pertaining to food additives, new animal drugs, and color additives, respectively. These clauses prohibit approval of substances that have been shown to induce cancer in man or animals. However, each clause contains an exception, termed the “Diethylstilbestrol (DES) Proviso,” that permits administration of such substances to food-producing animals where: (1) The food additive, color additive, or new animal drug will not

adversely affect the animal and (2) no residue of the food additive, color additive, or new animal drug will be found in any edible portion of that animal by a method of examination prescribed or approved by the Secretary of Health and Human Services by regulation. The regulations under part 500 (21 CFR part 500), subpart E entitled “Regulation of Carcinogenic Compounds Used in Food-Producing Animals” (§§ 500.80 through 500.92), implement the DES Proviso. To elaborate on how to determine that there is no residue, and thus demonstrate that the second prong of the DES Proviso has been satisfied, the regulations define several terms, including S_o and S_m.

S_o is currently defined as the concentration of the compound of carcinogenic concern in the total diet of test animals that corresponds to a maximum lifetime risk of cancer to the test animals of 1 in 1 million, and is calculated from tumor data of the cancer bioassays using a statistical extrapolation procedure. The definition of S_o also provides that FDA will assume that the S_o corresponds to the concentration of residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer to people. The concentration, derived from the S_o, of residues of carcinogenic concern in a specific edible tissue is termed the S_m.

This rule changes the definition of S_o so that it is primarily defined as “the concentration of a residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer to the human consumer * * *” and secondarily as “the concentration of test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.” The change in this rule to the definition of S_o is intended to enable the Center for Veterinary Medicine to consider allowing the use of alternative procedures to satisfy the DES Proviso (See 75 FR 79320 at 79321) without requiring the development of a second, alternative, set of terminology. FDA believes that the original intent of 21 CFR part 500, Subpart E, as reflected in the preamble to the final rule establishing that regulation, was to place an emphasis on no significant increase in the risk of cancer to the human consumer, rather than on the specific 1 in 1 million risk of cancer to the test animals approach (See e.g., 52 FR 49572 at 49575 and 49582). Therefore, FDA has concluded that the redefinition of S_o is consistent with this original intent of the regulation.

For clarification purposes, FDA is also redefining S_m in § 500.82 to conform this definition with the redefinition of S_o as described previously. Specifically, S_m will mean the concentration of a residue of carcinogenic concern in a specific edible tissue corresponding to no significant increase in the risk of cancer to the human consumer. However, the definition of S_m will also retain the existing reference to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.

Finally, FDA is amending § 500.84(c) to clarify that for each compound that is regulated as a carcinogen, FDA will analyze the data submitted using either a statistical extrapolation procedure as provided in § 500.84(c)(1) or an alternate approach as provided in § 500.90.

FDA's goal in these changes is to clarify that the terms S_o and S_m apply even when the alternative procedures provided for in § 500.90 are used to satisfy the DES Proviso, not to alter the usual process for approving compounds of carcinogenic concern. As such, in the absence of a waiver of the requirements of § 500.84(c)(1), FDA maintains that sponsors must meet the conditions for approval set for in § 500.84, including the default approach of a 1 in 1 million lifetime risk to the test animal.

II. Comments

FDA received six comments in response to the proposed rule. Two of these comments were outside the scope of the rule as they advocated in one case that FDA hold a public hearing regarding the drug Avastin®, and the other comment concerned veterinary compounding.

(Comment 1) Of the remaining comments, one generally supported the rule, but mistakenly believed that the rule “will limit carcinogenic compounds in food producing animals to 1 in 1 million.”

In fact, the rule clarifies the definition of S_o in 21 CFR 500.82 to mean primarily “the concentration of a residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer to the human consumer * * *” and secondarily, “ S_o will correspond to the concentration of test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.” The rule also clarifies the definition of S_m to mean primarily “the concentration of a residue of carcinogenic concern in a specific edible tissue corresponding to no significant increase in the risk of cancer to the human consumer * * *” and

secondarily “the concentration of test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.”

(Comment 2) A comment from a veterinary association generally supported the rule and its goal to allow the use of alternative procedures to satisfy the DES Proviso without requiring the development of a second, alternative, set of terminology. The comment advocated the use of “statistically valid risk assessment procedures in its evaluation and consideration of the compounds of carcinogenic concern.” The comment continued, “That if alternative procedures are allowed, they should be also definable and data driven.” FDA generally agrees with the comment that an alternative procedure should be definable and data driven in order to be acceptable. However, the recommendation is also outside the current scope of the current rule as it clarifies the definition of S_o and S_m and will not address alternative procedures.

(Comments 3 and 4) Another commenter opposed the rule, advocating a ban on all carcinogens in animal food, even in minute quantities. A second comment mistakenly stated that the rule “is a proposal to remove any carcinogen from any drugs or feed that are given to animals that are generally eaten by humans.”

As previously stated, the FD&C Act contains three anticancer, or Delaney, clauses: Sections 409(c)(3)(A), 512(d)(1)(I), and 721(b)(5)(B)(i), pertaining to food additives, new animal drugs, and color additives, respectively. These clauses prohibit approval of substances that have been shown to induce cancer in man or animals, with the following exceptions termed the “DES Proviso.” The DES Proviso permits FDA to approve carcinogenic compounds for use in food-producing animals if it concludes that, when used in accordance with its label directions: (1) The compound will not adversely affect the animal; and (2) “no residue” of the compound will be found in any edible portion of the animals using a method of detection prescribed by FDA. FDA's approach to implement the Delaney clause and the DES Proviso is described in part 500, subpart E, entitled “Regulation of Carcinogenic Compounds Used in Food-Producing Animals,” §§ 500.80 through 500.92. As described earlier, the current rule clarifies the definitions within this set of regulations.

III. Environmental Impact

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

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA concluded that the proposed rule would not impose any direct or indirect costs on industry or government through the changes to the definitions of S_o and S_m and to § 500.84(c), but rather would clarify these definitions to enable FDA to consider using alternative procedures to satisfy the DES Proviso without requiring the development of a second, alternative, set of terminology. FDA did not receive any public comments that challenged this conclusion. As such, FDA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

This final rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in § 500.84 have been approved under OMB control number 0910–0032.

List of Subjects in 21 CFR Part 500

Animal drugs, animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCBs).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 500 is amended as follows:

PART 500—GENERAL

■ 1. The authority citation for 21 CFR part 500 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 500.82(b), revise the definitions of “ S_m ” and “ S_o ” to read as follows:

§ 500.82 Definitions.

* * * * *

(b) * * *

S_m means the concentration of a residue of carcinogenic concern in a specific edible tissue corresponding to no significant increase in the risk of cancer to the human consumer. For the purpose of § 500.84(c)(1), FDA will assume that this S_m will correspond to the concentration of residue in a specific edible tissue that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.

S_o means the concentration of a residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer

to the human consumer. For the purpose of § 500.84(c)(1), FDA will assume that this S_o will correspond to the concentration of test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.

* * * * *

■ 3. In § 500.84, revise paragraph (c) introductory text to read as follows:

§ 500.84 Conditions for approval of the sponsored compound.

* * * * *

(c) For each sponsored compound that FDA decides should be regulated as a carcinogen, FDA will either analyze the data from the bioassays using a statistical extrapolation procedure as outlined in paragraph (c)(1) of this section or evaluate an alternate procedure proposed by the sponsor as provided in § 500.90. In either case, paragraphs (c)(2) and (3) of this section apply.

* * * * *

Dated: August 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20609 Filed 8–21–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0765]

RIN 1625–AA00

Safety Zone; Seafood Festival Fireworks Display, Marquette, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone near Marquette, Michigan. This safety zone is intended to restrict vessels from a portion of Lake Superior due to a fireworks display. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a fireworks display.

DATES: This rule is effective from 9:30 p.m. until 11:00 p.m. on August 25, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0765]. To view documents in this preamble as being available in the

docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box, and click “Search.” You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email MST2 Kevin Moe, U.S. Coast Guard, Sector Sault Sainte Marie, telephone 906–253–2429, email at Kevin.D.Moe@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not received by the Coast Guard with sufficient time for a comment period to run before the start of the event. Thus, delaying this rule to wait for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard’s ability to protect the public from the hazards associated with maritime fireworks displays.

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

B. Basis and Purpose

On the evening of August 25, 2012, fireworks will be launched from a point on Marquette Bay to celebrate the Annual Marquette Seafood Festival. The Captain of the Port, Sector Sault Sainte Marie, has determined that the Marquette Seafood Festival Fireworks Display will pose significant risks to the public. The likely congested waterways in the vicinity of a fireworks display could easily result in serious injuries or fatalities.

C. Discussion of Rule

To mitigate the risks associated with the Seafood Festival Fireworks Display, the Captain of the Port, Sector Sault Sainte Marie will enforce a temporary safety zone in the vicinity of the launch site. This safety zone will encompass all waters of Lake Superior in Marquette Harbor, within the arc of a circle with a 1,000 ft radius from the fireworks launch site located in position 46°32'21.7" N, 087°23'07.60" W [DATUM: NAD 83]. The safety zone will be effective and enforced from 9:30 p.m. until 11:30 p.m. on August 25, 2012.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative. The Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative may be contacted via VHF channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under these Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant

or loan recipients, and will not raise any novel legal or policy issues. The safety zone will exist for only a minimal time. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by proper authority.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Superior between 9:30 p.m. and 11:00 p.m. on August 25, 2012.

This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced for a short period of time. Vessels may safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Sault Sainte Marie, to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

about this rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09-0765 to read as follows:

§ 165.T09-0765 Safety Zone; Seafood Festival Fireworks Display, Marquette, Michigan.

(a) *Location.* All U.S. navigable waters of Marquette Harbor within a 1000-foot radius of the fireworks launch site, centered approximately 1250 feet south of the Mattson Park Bulkhead Dock and 450 feet east of Ripley Rock, at position 46°32'21.7" N, 087°23'07.60" W [DATUM: NAD 83].

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 9:30 p.m. until 11:00 p.m. on August 25, 2012.

(c) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

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

(4) Vessel operators desiring to enter the safety zone or operate within the safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

Dated: August 13, 2012.

J.C. McGuiness,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2012-20698 Filed 8-21-12; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-RO1-OAR-2008-0117; EPA-RO1-OAR-2008-0107; EPA-RO1-OAR-2008-0445; FRL-9672-5]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut, Massachusetts, and Rhode Island; Reasonable Further Progress Plans and 2002 Base Year Emission Inventories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan revisions submitted by the States of Connecticut, Massachusetts, and Rhode Island. These revisions establish 2002 base year emission inventories and reasonable further progress emission reduction plans for areas within these states designated as nonattainment of EPA's 1997 8-hour ozone standard. The intended effect of this action is to approve these states' 2002 Base Year Inventories and reasonable further progress (RFP) emission reduction plans, and to approve the 2008 motor vehicle transportation budgets and contingency measures associated with the RFP plans. EPA also is approving three rules adopted by Connecticut that will reduce volatile organic compound emissions in the state. This action is being taken in accordance with the Clean Air Act.

DATES: *Effective Date:* This rule is effective on September 21, 2012.

ADDRESSES: EPA has established dockets for these actions under Docket Identification Numbers EPA-RO1-OAR-2008-0117 for our action for Connecticut, EPA-RO1-OAR-2008-0107 for our action for Massachusetts, and EPA-RO1-OAR-2008-0445 for our action for Rhode Island. All documents in the dockets are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality

Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the respective State Air Agency: Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630; Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108; Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Air Quality Planning Unit, U.S. EPA Region 1—New England, 5 Post Office Square, Boston, MA 02109–3912, phone number: 617–918–1046; eMail: mcconnell.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. 2002 Base Year Emission Inventories
 - A. What is a base year inventory and why are these states required to prepare one?
 - B. Summary of 2002 Base Year Inventories
 - C. What action is EPA taking on these inventories?
- III. Reasonable Further Progress Plan, Contingency Plans, and State VOC Rules
 - A. What is a Reasonable Further Progress (RFP) plan, and why were these states required to prepare one?
 - B. What action is EPA taking on these RFP plans?
 - C. Is EPA approving any state control measures in this action?
 - D. Have these states met their contingency measure obligation?
 - E. How do these plans affect transportation conformity?
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background and Purpose

On September 20, 2010 (75 FR 57221), EPA published a Notice of Proposed Rulemaking (NPR) for the States of Connecticut, Massachusetts, and Rhode

Island. The NPR proposed approval of 2002 base year emission inventories and reasonable further progress emission reduction plans for areas within these states designated as nonattainment of EPA’s 1997 8-hour ozone standard. Additionally, the NPR proposed approval of the 2008 motor vehicle transportation budgets and contingency measures associated with the RFP plans. EPA also proposed approval of three rules adopted by Connecticut that will reduce volatile organic compound emissions in the state. In today’s final rule we are approving the items for which we proposed approval in the NPR. Today’s final rule was originally signed on May 2, 2012, but due to a clerical error was not published.

On April 30, 2004, EPA designated portions of the country as being in nonattainment of the 1997 8-hour ozone national ambient air quality standard (NAAQS) (69 FR 23858).¹ All parts of Connecticut, Massachusetts, and Rhode Island were designated as nonattainment for ozone, and all were classified as moderate. There were five nonattainment areas created that encompassed the entirety of these states, as shown in Table 1.

TABLE 1—8-HOUR OZONE NONATTAINMENT AREAS IN CONNECTICUT, MASSACHUSETTS, AND RHODE ISLAND

State	Area name	Geographic area covered (counties)
CT	New York-N. New Jersey-Long Island, NY-NJ-CT (NY-NJ-CT area).	Fairfield, Middlesex, New Haven.
CT	Greater Connecticut area	Hartford, Litchfield, New London, Tolland, Windham.
MA	Bos-Law-Wor (E. MA) area	Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, Worcester.
MA	Springfield (W. MA) area	Berkshire, Franklin, Hampden, Hampshire.
RI	Providence area	Statewide.

As discussed in our September 20, 2010 NPR, the Act contains air quality planning and control requirements for ozone nonattainment areas. For more information about these requirements and our evaluation of each state’s means of addressing them, please refer to the more detailed analysis presented within the September 20, 2010 NPR.

II. 2002 Base Year Emission Inventories

A. What is a base year inventory and why are these states required to prepare one?

The Act contains a number of requirements for moderate ozone nonattainment areas. One requirement, found at section 182(a)(1) of the Act and made applicable to moderate ozone nonattainment areas through section

182(b), compels the preparation and submittal of a “comprehensive, accurate, current inventory of actual emissions from all sources.” In August, 2005, EPA published supplemental guidance for states to use in development of their base year inventories entitled, “Emission Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulation” (EPA–454/R–05–001). This guidance describes for states the requirements for development of comprehensive emission estimates from stationary point and area sources, and from mobile on-road and non-road sources, such that complete emission inventories are available to support SIP development for the 8-hour ozone

standard. Each state complemented these emission estimates from man-made sources with biogenic (naturally occurring) emission estimates from plants, trees, grasses and crops prepared by EPA. The guidance directs states to prepare their emission estimates on a “typical summer day” basis to reflect emissions that occur during high ozone episodes, which occur predominantly during the warm summer months.

As mentioned above, Connecticut, Massachusetts, and Rhode Island all contain ozone nonattainment areas designated as moderate for the 1997 8-hour ozone standard. Therefore, they were required to develop 2002 base year emission inventories of VOC and NO_x, as these compounds react in the presence of heat and sunlight to form ozone.

¹ The 1997 8-hour ozone standard itself is codified at 40 CFR 50.10.

B. Summary of 2002 Base Year Inventories

The 2002 VOC and NO_x base year inventories prepared by Connecticut,

Massachusetts, and Rhode Island are shown below in Tables 2a through 2e. EPA has concluded that these states have adequately derived and

documented the 2002 base year VOC and NO_x emissions for these areas, and our intention is to approve these inventories into the SIP for each state.

TABLE 2a—2002 BASE YEAR INVENTORY FOR THE NY-NJ-CT AREA

Nonattainment area	2002 VOC emissions (tons/day)	2002 NO _x emissions (tons/day)
NY-NJ-CT area:		
Point	11.3	37.7
Area	84.1	7.2
On-road	48.1	102.7
Non-road	66.0	38.7
Biogenics	125.6	0.7
Total	335.3	187.0

TABLE 2b—2002 BASE YEAR INVENTORY FOR THE GREATER CONNECTICUT AREA

Nonattainment area	2002 VOC emissions (tons/day)	2002 NO _x emissions (tons/day)
Greater Connecticut area:		
Point	4.6	19.0
Area	75.5	6.4
On-road	45.1	89.3
Non-road	56.2	30.8
Biogenics	268.9	1.3
Total	450.3	146.8

TABLE 2c—2002 BASE YEAR INVENTORY FOR THE BOS-LAW-WOR (E. MA) AREA

Nonattainment area	2002 VOC emissions (tons/day)	2002 NO _x emissions (tons/day)
Bos-Law-Wor (E. MA) area:		
Point	13.6	116.6
Area	282.0	33.9
On-road	127.4	381.4
Non-road	196.2	122.1
Biogenics	535.7	4.4
Total	1,154.9	658.4

TABLE 2d—2002 BASE YEAR INVENTORY FOR THE SPRINGFIELD (W. MA) AREA

Nonattainment area	2002 VOC emissions (tons/day)	2002 NO _x emissions (tons/day)
Springfield (W. MA) area:		
Point	2.4	13.0
Area	45.5	5.2
On-road	24.5	71.7
Non-road	27.7	22.4
Biogenics	254.6	1.1
Total	354.7	113.4

TABLE 2e—2002 BASE YEAR INVENTORY FOR THE PROVIDENCE AREA

Nonattainment area	2002 VOC emissions (tons/day)	2002 NO _x emissions (tons/day)
Providence area:		
Point	10.3	7.0

TABLE 2e—2002 BASE YEAR INVENTORY FOR THE PROVIDENCE AREA—Continued

Nonattainment area	2002 VOC emissions (tons/day)	2002 NO _x emissions (tons/day)
Area	47.9	3.4
On-road	32.3	42.4
Non-road	26.8	19.7
Biogenics	124.2	0.7
Total	241.5	73.2

C. What action is EPA taking on these inventories?

We are approving the 2002 base year inventories listed in Tables 2a through 2e above.

III. Reasonable Further Progress Plans, Contingency Plans, and State VOC Rules

A. What is a Reasonable Further Progress (RFP) plan and why were these states required to prepare one?

A reasonable further progress (RFP) plan illustrates how an ozone nonattainment area will make emission reductions of a set amount over a given time period. EPA's Phase 2 implementation rule for the 1997 ozone standard interpreted how Section 182(b)(1) of the CAA would apply to

areas designated as moderate (or higher) nonattainment of the 1997 8-hour ozone standard. See 40 CFR part 51 subpart X. Of relevance for Connecticut, Massachusetts and Rhode Island is what the Phase 2 rule required for areas with attainment dates greater than 5 years from designation that previously accomplished a 15% reduction in VOC emissions pursuant to one-hour ozone nonattainment requirements, as all three of these states meet these criteria. For such areas, the Phase 2 rule indicates that RFP will be met if the area can demonstrate a 15% reduction in ozone precursor emissions (VOC and/or NO_x) will occur between 2002 and 2008.² See 40 CFR 51.910(b)(2)(ii)(A)–(B). These states prepared RFP plans for each of the nonattainment areas shown in Table

1 above, and our September 20, 2010 notice of proposed rulemaking contains a summary of these plans and the results of our evaluation of them.

B. What action is EPA taking on these RFP plans?

We are approving the RFP plans submitted by Connecticut, Massachusetts, and Rhode Island for the moderate ozone nonattainment areas shown in Table 1 above, as revisions to these states' SIPs. Note that regarding the NY-NJ-CT moderate area, we are taking action today only on the Connecticut portion of the RFP plan for that area. The VOC and NO_x emission target levels and modeled, controlled 2008 emissions for each nonattainment area are shown within Table 3 below.

TABLE 3—2008 RFP EMISSION TARGET LEVELS AND MODELED, CONTROLLED EMISSIONS

Nonattainment area	VOC emissions target; modeled 2008 emissions (tons/day)	NO _x emissions target; modeled 2008 emissions (tons/day)
NY-NJ-CT area	184.6; 167.6	167.9; 142.6
Greater Connecticut area	159.4; 149.3	130.0; 107.1
Bos-Law-Wor area	588.1; 525.7	562.7; 440.6
Springfield area	94.4; 84.2	92.0; 66.9
Providence area	113.7; 115.4	57.8; 55.3

Note that in Table 3 above, all of the modeled 2008 emission levels are lower than the corresponding 2008 emission target levels with the exception of the Providence area's VOC emissions which are 1.5% higher than the 2008 VOC target. In light of this, Rhode Island allocated an additional 1.5% NO_x reduction (which translates to 1.1 tons) to cover this shortfall. Thus, Rhode Island has set its 2008 NO_x target to 57.8 tons/day rather than 58.9 tons/day. In essence, Rhode Island has selected a 16.6% reduction in NO_x emissions and a 1.5% increase in VOC emissions, resulting in a combined reduction of

15.1%. A more detailed discussion of this is contained within our September 20, 2010 proposal.

Additionally, a typographical error within our September 20, 2010 proposal occurred within step 6 of Table 3d, where the detailed RFP target level calculations for the Springfield area are shown. The error is that the information for step 5 is repeated and appears as step 5 and also as step 6, resulting in the correct information for step 6 not being shown. The correct step 6 information that should have been shown within our September 20, 2010 action for VOC emissions in tons/day is: 100.2 – 5.8 =

94.4; and for NO_x emissions, also in tons/day, is: 113.1 – 21.1 = 92.0.

C. Is EPA approving any state control measures in this action?

We are approving three VOC control measures from Connecticut. Two of these rules consist of amendments to existing rules. The two amended rules are a solvent metal cleaning rule, located at section 22a–174–20(l) of the Regulations of Connecticut State Agencies, and the second rule is the state's asphalt paving rule, located at 22a–174–20(k) of the Connecticut regulations. We are approving the

² If the area wishes to use NO_x reductions to meet part or all of this 15% requirement, the calculation is not done by measuring the overall percent of

combined VOC and NO_x reductions, but rather by separately calculating the percent of VOC

reductions and the percent of NO_x reductions, and adding those percentages together.

amended solvent metal cleaning rule and the amended asphalt paving rule as they were submitted to EPA, with the exception of the bracketed text as that language represents regulatory text from a prior version of the rule which Connecticut has retracted. The third rule we are approving is Connecticut's architectural and industrial maintenance (AIM) coatings rule, located at section 22a-174-41 of the Connecticut regulations. The solvent metal cleaning and AIM coatings rules have compliance dates in May of 2008, and so achieve emission reductions that help Connecticut demonstrate compliance with its RFP obligation. The amendment to the asphalt paving rule has a May 1, 2009 compliance date and was submitted to help the state demonstrate that it meets the Clean Air Act section 182(b)(2) requirement that sources in the state use reasonably available control technology (RACT) to control air pollution. We are not taking action on Connecticut's overall RACT or reasonably available control measure (RACM) submittals at this time. Additional details regarding our approval of these three Connecticut rules are available within our September

20, 2010 proposal. Our approval of these rules makes them part of Connecticut's federally enforceable SIP.

D. Have these states met their contingency measure obligation?

Section 172(c)(9) of the CAA requires, in part, that nonattainment areas provide for contingency measures "to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part." As noted in our September 20, 2010 proposal, for Connecticut and Massachusetts we are approving each state's use of the surplus emission reductions that are documented within their RFP emission target level calculations.

For Rhode Island, we are approving use of the emission reductions from two stationary source measures as meeting the state's contingency plan requirement. In 2009, Rhode Island adopted VOC control regulations establishing emission limits for consumer and commercial products, and for architectural and industrial maintenance coatings. A public hearing on these proposed rules was held on

February 20, 2009, and they were promulgated as final state regulations May 15, 2009, with an effective date of June 4, 2009. Rhode Island submitted these regulations to EPA as SIP revisions, and we approved them in a direct final rule published in the **Federal Register** on March 13, 2012 (77 FR 14691).

E. How do these plans affect transportation conformity?

Section 176(c) of the CAA, and EPA's transportation conformity rule at 40 CFR part 93 subpart A, require that transportation plans, programs, and projects conform to state air quality implementation plans. States are required to establish motor vehicle emission budgets in any control strategy SIP that is submitted for attainment and maintenance of the NAAQS. The RFP plans submitted by Connecticut, Massachusetts, and Rhode Island are control strategy SIPs, and they contain 2008 motor vehicle budgets for VOCs and NO_x by nonattainment area. Table 4 contains these VOC and NO_x transportation conformity budgets in units of tons per summer day:

TABLE 4—CONFORMITY BUDGETS IN THE CONNECTICUT, MASSACHUSETTS, AND RHODE ISLAND RFP PLANS

Area name	2008 Transportation conformity budgets (tons/day)	
	VOC	NO _x
NY-NJ-CT area (CT portion)	29.7	60.5
Greater Connecticut	28.5	54.3
Bos-Law-Wor (E. MA) area	68.30	191.30
Springfield (W. MA) area	11.80	31.30
Providence	24.64	28.26

In today's action, we are approving the 2008 conformity budgets for VOC and NO_x for the areas shown in Table 4 above.

Other specific requirements of these state's inventories, RFP plans, and Connecticut's VOC control regulations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

IV. Final Action

EPA is approving 2002 emission inventories and reasonable further progress plans as revisions to the Connecticut, Massachusetts, and Rhode Island SIP. We are also approving the 2008 motor vehicle emission budgets and contingency measures associated with these RFP plans. Additionally, we are approving three Connecticut VOC control regulations, Sections 22a-174-

20(k), 22a-174-20(l), and 22a-174-41 as revisions to the Connecticut SIP.

V. Statutory and Executive Order

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 9, 2012.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

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

PART 52—[AMENDED]

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

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

Subpart H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(100), to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(100) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 1, 2008 and January 8, 2009.

(i) Incorporation by reference.

(A) State of Connecticut Regulation, Section 22a-174-20(k), Restrictions on VOC Emissions from Cutback and Emulsified Asphalt (excluding the text that appears in brackets), effective in the state of Connecticut on January 1, 2009.

(B) A letter from Barbara Sladeck, RLS Assistant Coordinator, Office of the Secretary of the State, State of Connecticut, to Hon. Gina McCarthy, Commissioner, Department of Environmental Protection, dated July 26, 2007, stating that the effective date of the Amendment of Section 22a-174-20(l), Metal Cleaning, and Adoption of Section 22a-174-41, pertaining to Architectural and Industrial Maintenance Products, is July 26, 2007.

(C) State of Connecticut Regulation, Section 22a-174-20(l), Metal Cleaning, effective in the state of Connecticut on July 26, 2007, revisions to the following provisions (including the text that appears in underline and excluding the text that appears in brackets): Sections 22a-174-20(l)(1)(A) through (C) and (J) through (L), Sections 22a-174-20(l)(3), (A) through (D), (F) through (H), and (J) through (L), Sections 22a-174-20(l)(5) introductory text, (B), (E), and (M), and Section 22a-174-20(l)(6); and addition of Sections 22a-174-20(l)(7) through (9).

(D) State of Connecticut Regulation, Section 22a-174-41, Architectural and Industrial Maintenance Products, effective in the state of Connecticut on July 26, 2007.

■ 3. Section 52.377 is amended by adding paragraph (k) to read as follows:

§ 52.377 Control strategy: Ozone.

* * * * *

(k) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 1, 2008. These revisions are for the purpose of satisfying the rate of progress requirement of section 182(b)(1) from 2002 through 2008, and the contingency measure requirement of sections 172(c)(9) and of the Clean Air Act, for the Greater Connecticut moderate 8-hour ozone nonattainment area, and the Connecticut portion of the New York-New Jersey-Long Island moderate 8-hour ozone nonattainment area. These revisions establish motor vehicle emission budgets for 2008 of 29.7 tons per day of volatile organic compounds (VOCs) and 60.5 tons per day of nitrogen oxides (NO_x) to be used in transportation conformity in the Connecticut portion of the New York-New Jersey-Long Island moderate 8-hour ozone nonattainment area. These revisions also establish motor vehicle emission budgets for 2008 for the Greater Connecticut moderate 8-hour ozone nonattainment area of 28.5 tons per day for VOCs, and 54.3 tons per day for NO_x.

■ 4. Section 52.384 is amended by adding paragraph (d) to read as follows:

§ 52.384 Emission inventories.

* * * * *

(d) The state of Connecticut submitted base year emission inventories representing emissions for calendar year 2002 from the Connecticut portion of the NY-NJ-CT moderate 8-hour ozone nonattainment area and the Greater Connecticut moderate 8-hour ozone nonattainment area on February 1, 2008 as revisions to the State's SIP. The 2002 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for these areas. The inventories consist of emission estimates of volatile organic compounds and nitrogen oxides, and cover point, area, non-road mobile, on-road mobile and biogenic sources. The inventories were submitted as revisions to the SIP in partial fulfillment of obligations for nonattainment areas under EPA's 1997 8-hour ozone standard.

■ 5. In § 52.385, Table 52.385 is amended by:

■ a. Revising the entry with "Metal Cleaning" in the "Title/subject" column, in the series of rows pertaining to Connecticut State citation 22a-174-20.

■ b. Adding an entry with “Restrictions on VOC Emissions from Cutback and Emulsified Asphalt” in the “Title/subject” column, to the end of the series

of rows pertaining to Connecticut State citation 22a–174–20.

The revisions and additions read as follows:

■ c. Adding a new state citation 22a–174–41 in alpha-numeric order.

§ 52.385-EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut state citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comment/description
		Date adopted by state	Date approved by EPA			
*	* Metal Cleaning	* 7/26/07	* 8/22/12	* [Insert Federal Register page number where the document begins].	* (c)(100)	* Changes to solvent metal cleaning rule.
	* Restrictions on VOC Emissions from Cutback and Emulsified Asphalt.	* 12/29/08	* 8/22/12	* [Insert Federal Register page number where the document begins].	* (c)(100)	* Changes to cutback and emulsified asphalt paving rule.
* 22a–174–41	* Architectural and Industrial Maintenance Products.	* 7/26/07	* 8/22/12	* [Insert Federal Register page number where the document begins].	* (c)(100)	* New rule limiting VOC emissions from architectural and industrial maintenance coatings.
*	*	*	*	*	*	*

Subpart W—Massachusetts

■ 6. Section 52.1125 is amended by adding paragraph (d) to read as follows:

§ 52.1125 Emission inventories.

* * * * *

(d) The state of Massachusetts submitted base year emission inventories representing emissions for calendar year 2002 from the Boston-Lawrence-Worcester moderate 8-hour ozone nonattainment area and the Springfield moderate 8-hour ozone nonattainment area on January 31, 2008 as revisions to the State’s SIP. The 2002 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for these areas. The inventories consist of emission estimates of volatile organic compounds and nitrogen oxides, and cover point, area, non-road mobile, on-road mobile and biogenic sources. The inventories were submitted as revisions to the SIP in partial fulfillment of obligations for nonattainment areas under EPA’s 1997 8-hour ozone standard.

■ 7. Section 52.1129 is amended by adding paragraph (i) to read as follows:

§ 52.1129 Control strategy: Ozone.

* * * * *

(i) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on January

31, 2008. These revisions are for the purpose of satisfying the rate of progress requirement of section 182(b)(1) from 2002 through 2008, and the contingency measure requirement of sections 172(c)(9) and of the Clean Air Act, for the Boston-Lawrence-Worcester (E. MA) moderate 8-hour ozone nonattainment area, and the Springfield (W. MA) moderate 8-hour ozone nonattainment area. These revisions establish motor vehicle emission budgets for 2008 of 68.30 tons per day of volatile organic compounds (VOCs) and 191.30 tons per day of nitrogen oxides (NO_x) to be used in transportation conformity in the Boston-Lawrence-Worcester (E. MA) moderate 8-hour ozone nonattainment area. These revisions also establish motor vehicle emission budgets for 2008 for the Springfield (W. MA) moderate 8-hour ozone nonattainment area of 11.80 tons per day for VOCs, and 31.30 tons per day for NO_x.

Subpart OO—Rhode Island

■ 8. Section 52.2086 is amended by adding paragraph (e) to read as follows:

§ 52.2086 Emission inventories.

* * * * *

(e) The state of Rhode Island submitted base year emission inventories representing emissions for calendar year 2002 from the Providence moderate ozone nonattainment area on April 30, 2008 as revisions to the State’s

SIP. The 2002 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for this area. The inventory consists of emission estimates of volatile organic compounds and nitrogen oxides, and cover point, area, non-road mobile, on-road mobile and biogenic sources. The inventory was submitted as a revision to the SIP in partial fulfillment of obligations for nonattainment areas under EPA’s 1997 8-hour ozone standard.

■ 9. Section 52.2088 is amended by adding paragraph (e) to read as follows:

§ 52.2088 Control strategy: Ozone.

* * * * *

(e) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on April 30, 2008. The revision is for the purpose of satisfying the rate of progress requirement of section 182(b)(1) from 2002 through 2008, and the contingency measure requirement of sections 172(c)(9) and of the Clean Air Act, for the Providence moderate ozone nonattainment area. The revision establishes motor vehicle emission budgets for 2008 of 24.64 tons per day of volatile organic compounds and 28.26 tons per day of nitrogen oxides to be used in transportation conformity in

the Providence moderate 8-hour ozone nonattainment area.

[FR Doc. 2012-20390 Filed 8-21-12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2008-0599 ; A-1-FRL-9716-7]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the New Hampshire State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. The revision was submitted by the New Hampshire Department of Environmental Services (NHDES) on January 29, 2010, with supplemental submittals on January 14, 2011, and August 26, 2011. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I Areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program").

DATES: *Effective Date:* This rule is effective on September 21, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2008-0599. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER**

INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05-02), Boston, MA 02109—3912, telephone number (617) 918-1697, fax number (617) 918-0697, email mcwilliams.anne@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On February 28, 2012, EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. See 77 FR 11809. The NPR proposed approval of the New Hampshire State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. It was submitted by the New Hampshire Department of Environmental Services (NHDES) on January 29, 2010, with supplemental submittals on January 14, 2011, and August 26, 2011. Specifically, EPA proposed to approve New Hampshire's January 29, 2010 SIP revision, and its supplements, as meeting the applicable implementing regulations found in 40 CFR 51.308. EPA also proposed to approve, and incorporate into the New Hampshire SIP, New Hampshire's regulation Env-A 2300 Mitigation of Regional Haze and a permit for Public Service of New Hampshire (PSNH) Merrimack Station.

A detailed explanation of the requirements for regional haze SIPs, as well as EPA's analysis of New Hampshire's Regional Haze SIP submittal was provided in the NPR and is not restated here.

II. Response to Comments

EPA received a number of comments on our proposal to approve New

Hampshire's Regional Haze SIP submittal. Comments were received from NHDES, the U.S. Forest Service, the National Park Service (NPS), and the Sierra Club. The following discussion summarizes and responds to the relevant comments received on EPA's proposed approval of New Hampshire's Regional Haze SIP.

Comment: The U.S. Forest Service commented that they are pleased that current permit conditions require Merrimack Station to submit calendar monthly emission rates for the preceding twelve months by December 31, 2014, in order to determine the maximum sustainable rate of control for the facility. In addition, they acknowledged the work that the State of New Hampshire has accomplished and encouraged the State of New Hampshire to continue to reduce regional haze.

Response: EPA acknowledges this comment from the U.S. Forest Service.

Comment: NHDES noted that EPA incorrectly referred to the New Hampshire Air Toxic Control Act, NH Revised Statutes Annotated (RSA) 125-I, and the regulations promulgated thereunder as requiring the installation of the wet flue gas desulfurization (FGD) system for mercury removal on the two coal-fired boilers at PSNH Merrimack Station. The correct citation is NH RSA 125-O, the Multiple Pollutant Reduction Program statute. The sections of the law that specifically address mercury removal and require a FGD system are RSA 125-O:11-18.

Response: EPA agrees that there was an error in the citation of the law requiring the FGD system.

Comment: NPS commented that the Best Available Retrofit Technology (BART) modeling and interpretation did not follow EPA's BART modeling guidelines or the methods recommended by the Mid-Atlantic/Northeast Visibility Union (MANE-VU) States and the Federal Land Managers (FLMs). NPS stated that since only one year of meteorological data was modeled, NHDES should have used the 20% best natural background visibility conditions in the modeling and reported the maximum visibility impact at the Class I areas due to the source's baseline emissions and emissions control options. NPS noted that in NHDES's August 2011 revision, the BART modeling was partially corrected to use the natural background visibility, but still incorrectly reports the visibility impact for the 20% worst days and the 20% best days rather than the single day with the maximum visibility impact. NPS stated that while correcting the modeling results may not change the BART control decisions, EPA should

not propose to approve methods and interpretations that are not consistent with the correct applications by the other MANE-VU States and States in other regions. NPS recommended that NHDES and EPA correctly report the maximum visibility impact from the BART units for baseline emissions and emissions control options.

Response: Upon further inspection of the model output, NHDES confirmed that the single day with the maximum visibility impact was used when determining the visibility improvement expected from the installation of

potential BART control. The highest impact for the 20% worst natural days was used as the baseline condition for the determination of pre-control visibility impact and post-control visibility impact. The 20% worst natural visibility days were used instead of the 20% best natural visibility days because meteorological conditions prevalent during the 20% best natural visibility days are not conducive for transport from the New Hampshire BART sources to the nearby Class I Areas.

However, in response to the NPS's comment, NHDES did undertake a

modeling analysis to rerun the pre- and post-BART emission scenarios using the 20% best natural visibility days as the baseline to determine the greatest visibility impact from the BART sources.¹ As an example of the revised modeling, Table 1 provides the updated visibility improvement in deciviews (dv) expected from the various sulfur dioxide (SO₂) control strategies that were assessed for Newington Station NT1 (specifically the lowering of the sulfur content of the fuel oil used).

TABLE 1—COST AND VISIBILITY IMPACTS PROJECTED FROM IMPLEMENTATION OF SO₂ CONTROL USING THE REVISED NHDES VISIBILITY MODELING

% Sulfur	Increased cost/hr		\$/ton SO ₂ reduced		Visibility improvement at acadia (dv)	Cumulative visibility improvement (dv)
	Low	High	Low	High		
2% to 1%	\$0.00	\$2,993	0	\$1,030	0.4	0.79
2% to 0.7%	1,346	4,712	402	1,407	.....	.....
2% to 0.5%	2,020	6,059	528	1,583	0.62	1.21
2% to 0.3%	2,693	11,445	627	2,664	0.70	1.37

When using the 20% worst natural visibility days, the days in which the BART unit NT1 actually impacts the visibility in the nearby Class I areas, the visibility improvement between the selected level of SO₂ control (lowering the SO₂ emission limit to the equivalent of requiring 0.5% sulfur fuel oil) and the more stringent level of SO₂ control (lowering the SO₂ emission limit to the equivalent of requiring 0.3% sulfur fuel oil) is 0.06 dv (0.11 dv cumulative).² The corresponding visibility improvement using the 20% best natural visibility days is 0.08 dv (0.16 dv cumulative). Thus, the NPS comment has been addressed. EPA finds that the NHDES modeling is consistent with the methods recommended by MANE-VU and the FLMs.

Comment: Sierra Club referenced EPA's proposal to approve the New Hampshire determination that BART for Merrimack is wet scrubbers and a 90% reduction in SO₂ emissions, based on "[c]urrent permit conditions." Sierra Club asserted that while it is correct that wet scrubbers are BART for Merrimack, the SIP sets far too lax an emission standard for SO₂. Sierra Club also referenced the BART analysis for Merrimack Station which notes that SO₂ removal efficiencies for wet scrubbers in general range up to 97%, and for "new Flue Gas Desulfurization (FGD) systems

* * * the presumptive norm is 95 percent reduction of SO₂ emissions." Similarly, MANE-VU analysis "recommends [a] limit of 95% reduction in SO₂ emissions."

Furthermore, Sierra Club included a progress report developed by the operator of Merrimack, which states that the newly-installed scrubbers are actually removing far more than 90% of the SO₂ from the plant's exhaust stream. In the report, PSNH notes that the scrubbers are demonstrating "exceptional success" and that "[s]ulfur dioxide removal from boiler flue-gas is approximately 96-98%." See Public Service Company of New Hampshire Merrimack Station Scrubber Project Progress Report (March 22, 2012).³ Sierra Club concludes that there is no justification for the SIP's determination that BART for Merrimack consists of a mere 90% reduction in SO₂ emissions, when the presumptive standard would involve releasing half as much SO₂, and the facility is already claiming to emit less than a third as much. Sierra Club recommends that BART for Merrimack Station MK2 should involve at least a 97% SO₂ reduction rate.

Response: The installation of the wet scrubber is the result of state legislation requiring the reduction of mercury emissions from Merrimack Station Units MK1 and MK2.⁴ The wet scrubber has

the co-benefit of reducing SO₂ emissions, a visibility impairing pollutant. The wet scrubber has been configured to maximize the mercury emission reduction. It was not known at the time of the BART determination what the SO₂ control efficiency would be under the current configuration. Current permit conditions require the facility to submit calendar monthly emission rates for the preceding 12 months by December 31, 2014. At that time, New Hampshire will determine the maximum sustainable rate of control. As specified by permit conditions, in no case may this rate be less than 90% control. As supported by preliminary reports, it is expected that the scrubber will provide greater than 90% SO₂ control.

For the MK2 BART determination, NHDES considered the existing control, the wet scrubber which is calibrated for the removal of mercury. NHDES selected an approach that reasonably balances mercury removal with a sustainable level of SO₂ removal. EPA finds that the approach to setting BART level of controls for MK2 taken by New Hampshire is reasonable.

Comment: The Sierra Club noted that, since the BART analysis for Merrimack was based in part on Merrimack's actual historical capacity factors, any increase in Merrimack's capacity factor will

¹ New Hampshire's additional modeling "6-2012 Revised BART Modeling Results—V2.pdf" is available in the docket to this rulemaking.

² See EPA's NPR on New Hampshire SIP revision, 77 FR 11809, for the visibility impact using the 20% worst natural visibility background conditions for the Newington Station NT1 BART SO₂ analysis.

³ This document is available in the docket to this rulemaking.

⁴ See Multiple Pollutant Reduction Program, NH RSA 125-O:11-18.

result in increased emissions and negative impacts on visibility in ways that the SIP will fail to address. According to Sierra Club, the SIP should therefore be amended to restrict Merrimack's emissions not only on a basis of pollutants-per-MMBtu, but also through reference to Merrimack's actual historical level of operation. Put another way, Sierra Club suggested that the SIP must be revised to restrict Merrimack's operation to the capacity factors relied upon in the BART analysis.

Response: According to the BART Guidelines,⁵ when calculating the average cost of control, "The baseline emission rate should represent a realistic depiction of anticipated annual emissions for the source. In general, for the existing sources subject to BART, you will estimate the anticipated annual emissions from a baseline period. In the absence of enforceable emission limitations, you calculate baseline emissions based upon continuation of past practices." On the other hand, the BART Guidelines require enforceable limitations if the utilization or other parameters used to determine future emissions differ from past practice. See BART Guidelines Section D. Step 4.d (70 FR 39156, 39167, July 6, 2005). The utilization and parameters used in the BART analysis for Merrimack are consistent with baseline conditions and past practices, therefore the parameters used, including capacity factor, are not required to be enforceable. On the point of requiring a lb/MMBtu limit instead of a percent control efficiency limit, the BART guidelines list the presumptive levels in units of lb/MMBtu or a percent reduction, and thus we are approving the State's approach of percent control as being consistent with the guidelines.

Comment: NPS commented that NHDES should have considered Advanced Separated Overfire Air (ASOFA) as an oxides of nitrogen (NO_x) control option for Merrimack Station MK2 in addition to the existing SCR. NPS asserted that the addition of ASOFA would result in a NO_x rate of 0.24 lb/MMBtu instead of the proposed 0.30 lb/MMBtu 30-day rolling average. NPS indicated that a 25% NO_x reduction would provide 0.5 cumulative deciview of visibility improvement at Acadia National Park, Great Gulf Wilderness Area, and Lye Brook Wilderness Area. NPS reviewed four other coal/lignite-fired cyclone boilers (Kincaid in IL and Leland Olds #2 and Milton R. Young #1 & #2 in ND) that are subject to BART. NPS noted that the

Kincaid electrical generating unit (EGU) is already equipped with overfire air (and SCR), and the three cyclone boilers in ND will install ASOFA and Selective Non-Catalytic Reduction (SNCR) as BART. NPS cited the estimated NO_x emission reductions from the installation of ASOFA for Leland Olds #2 (LOS2), Milton R. Young #1 (MRY1) and Milton R. Young #2 (MRY2) as 28%, 39.5%, and 37.7%, respectively.

Response: Merrimack Station Unit MK2 is a 320 mega-watt (MW) coal-fired cyclone boiler. MK2 fires bituminous coal rather than lignite used in the units discussed by NPS. Bituminous coal ash becomes fluid at a higher temperature than lignite coal ash. This means that a higher combustion temperature is needed in bituminous coal boilers to ensure coal ash remains fluid and is properly removed from the boiler. Improper removal of coal ash can cause the boiler to plug with coal ash, shutting down combustion or creating unsafe operating conditions, and requiring maintenance for coal ash removal.

The installation of ASOFA would lower the combustion temperature and degrade the performance of the boiler. Due to the different properties of the fuels used, EPA does not agree that Merrimack Station Unit MK2 would achieve the same NO_x emission reduction from ASOFA as estimated for the cited units.

In addition, the North Dakota units lacked any NO_x control in the BART baseline, therefore the expected visibility improvement at the highest impacted Class I area due to installation of BART control is 2.9 dv for MRY1, 3.379 dv for MRY2, and 3.9 dv for LOS2. See 76 FR 58570 (Sept. 21, 2011). By comparison, Merrimack Station MK2 has an existing SCR. The greatest expected visibility improvement from the installation of ASOFA at MK2, using the NPS estimate of 25% reduction in NO_x, would be 0.2 dv at Acadia, 0.2 dv at Great Gulf, and 0.1 dv at Lye Brook. It is unlikely that the projected visibility improvement at these Class I areas would be cost-effective considering the cost of installation of ASOFA, the potential for degraded performance, and the increase in maintenance costs. EPA finds that the NHDES determination that SCR represents BART for Merrimack Station Unit MK2 is reasonable.

Comment: NPS commented that the emission limit for the electrostatic precipitators (ESPs) should reflect the actual capabilities of the units, 0.019 lb total suspended particulate ("TSP") per MMBtu instead of the proposed limit of 0.08 lb TSP/MMBtu.

Response: The BART Guidelines state "emission limits must be enforceable as a practical matter." The MANE-VU recommended particulate matter (PM) limit for non-CAIR EGUs, such as MK2, is 0.02–0.04 lb/MMBtu.⁶ NHDES decided to provide some level of flexibility to Merrimack Station which has a source subject to BART (MK2) and a source not subject to BART (MK1). MK2 and MK1 will share a stack with the installation of the new FGD. If only MK1 operated, the emission limit required by New Hampshire would represent a decrease of 70.4% from the MK1 emission limit of 0.27 lb/MMBtu. At worst, when only MK2 is operating, the emission limit represents a decrease of 64.8% from the currently permitted limit of 0.227 lb/MMBtu. The emission limit chosen by New Hampshire also results in a lower emission rate from the combined units than if New Hampshire had only required MK2 to meet the limit suggested by MANE-VU.⁷ Therefore New Hampshire's proposed BART control limit for PM is consistent with the MANE-VU recommended emission limit while providing flexibility to operate a shared stack. Considering the current controls on emissions from Merrimack Station—two ESPs in series—as well as the reductions guaranteed by New Hampshire's limits, EPA finds that NHDES was reasonable in establishing the TSP emission limit for MK2.

Comment: The Sierra Club commented that the New Hampshire haze SIP proposes that an emission limit of 0.08 lbs TSP/MMBtu comports with BART. However, the Sierra Club indicated that this limit is much higher than what is achievable by the PM controls at Merrimack and with BART. The Sierra Club cited the MANE-VU analysis which recommends a "particulate matter limit of 0.02–0.04 lb/MMBtu" for Merrimack unit MK2. Similarly, the Merrimack BART Analysis noted that stack tests for Merrimack have recorded actual PM

⁶ The MANE-VU Workgroup Recommended level of BART control can be found in Attachment W—"MANE-VU Five-Factor Analysis of BART eligible Sources" of the New Hampshire Regional Haze SIP submittal available in the docket for this rulemaking.

⁷ For the "bubble," the combined emission rate if both units are operating is 377 lb/hr:

$$0.08 \text{ lb/MMBtu} \times 4,711 \text{ MMBtu/hr} = 377 \text{ lb/hr.}$$

Without the "bubble," the sum of the individual emission rates applying MANE-VU's presumptive PM emission limit of 0.04 lb/MMBtu would be 473 lb/hr:

$$(0.04 \text{ lb/MMBtu} \times 3,473 \text{ MMBtu/hr}) + (0.27 \text{ lb/MMBtu} \times 1,238 \text{ MMBtu/hr}) = 473 \text{ lb/hr.}$$

New Hampshire's approach therefore results in a decrease of almost 100 lb/hr beyond what application of the MANE-VU suggested limit would require.

⁵ Guidelines for BART Determinations Under the Regional Haze Rule at Appendix Y to 40 CFR part 51.

emissions of as low as 0.021 lbs TSP/MMBtu. The Sierra Club concluded that this would support a determination that an appropriate BART limit for Merrimack would be 0.02 lbs TSP/MMBtu. However, the SIP proposes an emission limit of 0.08 lbs TSP/MMBtu for both units which would result in emissions “less than the total allowable TSP emissions * * * in which a limit for Unit MK2 were revised to 0.04 lb/MMBtu and the limit for Unit MK1 remained unchanged.” The Sierra Club acknowledged that while salutary—and potentially necessary to ensure that New Hampshire meets its reasonable progress goals—the Sierra Club does not think the implementation of a limit for unit MK1 has any bearing on what BART-derived limit is consistent with what is “achievable through the application of the best system of continuous emission reduction” for MK2. Sierra Club stated that New Hampshire may not quadruple the emissions from a BART-eligible unit and call it BART just because it also proposes to limit emissions from another source elsewhere. The limits applicable to MK2 are derived from what may be achieved from the best available retrofit technology. Here, that technology supports an emissions limit of 0.02 lbs TSP/MMBtu; Sierra Club indicated that this limit, and not 0.08 lbs TSP/MMBtu, should be set as BART in the SIP. In addition, to ensure that particulate matter emission reductions are being achieved, the Sierra Club commented that the SIP should require continuous emissions monitoring for particulate matter.

Response: With the installation of the FGD, MK1 and MK2 share a common stack and the EPA finds that NHDES has acted reasonably in setting an emission limit that accounts for, and reduces, emissions from both units. The permit conditions require stack testing post emission controls, and therefore the TSP emissions from MK1 must be considered when developing the TSP emission limit for MK2. Sierra Club has incorrectly characterized New Hampshire’s Regional Haze SIP as allowing emissions from a BART-eligible unit to quadruple. As noted in the response above, even under the worst case scenario where only MK2 is operating, New Hampshire’s approach results in a decrease of approximately 65% TSP. Assuming dual operation of MK1 and MK2, New Hampshire’s approach results in nearly 100 lb TSP/hr less than the limit MANE-VU, and Sierra Club, recommend.

As to the Sierra Club suggestion of requiring a CEM for particulate matter, current federally enforceable permit conditions require the continuous

operation of the existing ESPs. While emission limits must be enforceable as a practical matter, the BART Guidelines clearly state that continuous emission monitors (CEMs) are not required in every instance. See 70 FR 39172, July 6, 2005. Moreover, the BART Guidelines recognize that monitoring requirements are in many instances governed by other regulations, such as compliance assurance monitoring.

EPA reiterates that New Hampshire has reasonably developed a control level of MK2 that provides for significant emissions reductions and operational flexibility.⁸

Comment: Sierra Club commented that the SIP does not explicitly include requirements for continuous operation of either the PM or SO₂ controls.

Response: With respect to SO₂ controls, the operating permit submitted as part of the New Hampshire haze SIP states, “Beginning on July 1, 2013, the Owner shall not operate MK2 unless MK2-PC7 (the scrubber) is in operation.”⁹ EPA proposed to approve this permit and incorporate it into the SIP on Feb 28, 2012. See 77 FR 11809. EPA is approving this permit in today’s action. With respect to PM controls, as discussed in the previous response, the existing federally enforceable Title V permit requires continuous ESP operation to meet permit limits.¹⁰

Comment: The Sierra Club observed that much of the New Hampshire haze SIP is based on modeling and other determinations developed as part of the MANE-VU regional planning organization analysis incorporating pollution and visibility data from a wide range of states and tribal entities. MANE-VU member state and tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, and Vermont. Sierra Club noted that implicit in the New Hampshire haze SIP is the understanding that each individual entity within MANE-VU will achieve the reductions specified for each jurisdiction. Accordingly, the limits and

⁸ Sierra Club also commented that EPA should “address all particulate matter, not just TSP.” Total suspended particulates, or TSP, is the measure of total particulate matter, regardless of size, and therefore accounts for all particulate matter emissions.

⁹ See Public Service of New Hampshire Merrimack Station Temporary Permit TP-0008 Table 4, Item 7. This document is available in the docket for this rulemaking.

¹⁰ See Public Service of New Hampshire Merrimack Station Title V Permit Table 5, Item 7, condition B. This document is available in the docket for this rulemaking.

goals for reasonable progress determined in the New Hampshire SIP are based on the reductions in other jurisdictions being met.

Sierra Club asserted that not all MANE-VU jurisdictions are, in fact, on target to meet their reductions. According to Sierra Club, to the extent that the assumptions underpinning the reasonable progress goals in the New Hampshire haze SIP are thereby impacted, the accuracy of the analysis in the SIP should be re-examined.

Response: The EPA notes that the Regional Haze Rule (RHR) requires States to determine what constitutes reasonable progress by, among other things, consideration of the four statutory factors. The RHR states that the determination of what constitutes reasonable progress can only be made once the necessary technical analyses of emissions, air quality, and the reasonable progress factors have been conducted. See 64 FR 35721, July 1, 1999. The RHR states the following: “Once a State has adopted a reasonable progress goal and determined what progress will be made toward that goal over a 10-year period, the goal itself is not enforceable. All that is ‘enforceable’ is the set of control measures which the State has adopted to meet that goal. If the State’s strategies have been implemented but the State has not met its reasonable progress goal, the State could either: (1) Revise its strategies in the SIP for the next long-term strategy period to meet its goal, or (2) revise the reasonable progress goals for the next implementation period. In either case, the State would be required to base its decisions on appropriate analyses of the statutory factors included in 40 CFR 51.308(d)(1)(i)(A) and (B) of the final rule.” See 64 FR 35733, July 1, 1999.

Consistent with 40 CFR 51.308(g), New Hampshire has committed to submit to EPA a progress report, in the form of a SIP revision, every five years following the initial submittal of the SIP. The report will evaluate the progress towards the reasonable progress goal for each mandatory Class I area located within the State and in each mandatory Class I area located outside the State that may be affected by emissions from within the State. At this time, New Hampshire will also determine the adequacy of the existing implementation plan. See 40 CFR 51.308(h).

Sierra Club is correct to point out that implementation of the regional haze program in one State is to a certain extent interconnected with implementation in other States. However, requiring constant revision to modeled emission levels prior to

implementation would create indecisiveness and gridlock and would stall implementation of emissions reductions. EPA adopted the above mentioned aspects of the Regional Haze Rule to allow adjustments of State planning goals during, and at the end of, each planning period to account for any discrepancies between projected and actual emissions reductions both within the State and from other States. EPA disagrees with Sierra Club and does not find that New Hampshire must reevaluate the modeling in its SIP at the present time.

Comment: NPS commented that NHDES is not proposing emission reductions sufficient to meet the MANE-VU ask. The FLMs disagree with EPA's proposal to approve New Hampshire's plan and recommend the EPA disapprove the New Hampshire plan because it does not meet the reasonable progress goals set by New Hampshire.

Response: New Hampshire, in cooperation with the MANE-VU States, developed the MANE-VU "Ask" that will provide for reasonable progress towards achieving natural visibility at the MANE-VU Class I areas. The "Ask" consists of: (a) Timely implementation of BART requirements; (b) a 90 percent reduction in SO₂ emissions from each of the EGU stacks identified by MANE-VU comprising a total of 167 stacks; (c) adoption of a low sulfur fuel oil strategy; and (d) continued evaluation of other control measures to reduce SO₂ and NO_x emissions. While New Hampshire is not adopting a low sulfur fuel oil strategy as part of this submittal, it is expected that the FGD for Merrimack Station MK1 and MK2 will provide greater than 90% SO₂ control. In addition, SO₂ emissions in New Hampshire have been reduced through the conversion of coal-fired Unit 5 at Schiller Station to a biomass-firing unit and the shutdown of Fraser LLC pulp and paper mill.¹¹ The reasonable progress goal developed by New Hampshire, along with the other MANE-VU States is a goal and not in of itself enforceable. As noted in the above response, New Hampshire will have the opportunity to assess the reasonable progress goals and the State's control strategies as part of the 5-year review. EPA reiterates that the SO₂ emission reductions included in the New Hampshire Regional Haze SIP are comparable to reductions from the MANE-VU "Ask" and will be sufficient to assure progress toward the natural

visibility goal for the New Hampshire Class I areas for the first planning period.

Comment: The Sierra Club commented that the MANE-VU four factor analysis for reasonable progress determined that "reductions in SO₂ emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the MANE-VU region, more than any other visibility-impairing pollutant." See 77 FR 11816, February 28, 2012. MANE-VU thus recommended a 90% reduction in SO₂ emissions from EGU emissions points. The Sierra Club indicated that PSNH Schiller Station in Portsmouth, New Hampshire, is one of the largest sources of SO₂ pollution in New Hampshire, emitting 3,549 tons of SO₂ in 2009 and 1,706 tons in 2010, according to EPA's Clean Air Markets Database. The Sierra Club also stated that in recent years, Schiller is emitting SO₂ at levels below historical norms for operation of the facility and credited this emission reduction to the recent economic downturn.

Sierra Club continued that while this emission reduction results in less haze-causing air pollution in New Hampshire, the temporary emissions reductions owing to the economic downturn and attendant diminished output capacity at Schiller will not be permanent. Thus, Sierra Club concluded that if these capacities are relied upon in reasonable progress determinations for the New Hampshire Class I areas, they must be made enforceable, with permit conditions limiting the hours of operation or automatically requiring additional controls in the event that specific annual usage is exceeded. This is critical given the historic fluctuations in emission levels at Schiller.

Sierra Club also stated that to the extent that the decreased SO₂ emissions are due to Schiller's conversion of one of its coal-fired boilers to burn biomass, these reductions should be made enforceable by requiring that Schiller not burn any coal in that boiler. Otherwise, should economic conditions change or Schiller's operator change its mind about what it would like to burn in that boiler, the visibility gains factored into the SIP's reasonable progress planning would be jeopardized.

Response: As noted above, the "Ask" calls for a 90% reduction in SO₂ emissions from the top 167 impacting electrical generating units (EGUs). MANE-VU modeling did not indicate that units at Schiller Station were amongst the highest contributors to visibility impairment at any nearby

Class I area.¹² The modeling was conducted using 2002 emissions, prior to any economic downturn.

As indicated by Sierra Club, in 2006, Public Service of New Hampshire converted one of the three 50 MW units from coal burning to biomass burning. The permit modification to convert to biomass burning was undertaken through the federally approved permit process and any modification that increases emissions above the applicable level would require a federally approved permit. EPA relied upon this conversion to biomass, and the related emissions reductions, and not on any decreased utilization of other units at Schiller in evaluating New Hampshire's plans to achieve reasonable progress.

Comment: NPS observed that EPA states in the NPR: "New Hampshire relied on emission reductions from a number of ongoing and expected air pollution control programs as part of the State's long term strategy. For electrical generating units (EGUs), New Hampshire's Regulation Chapter Env-A 3200, NO_x Budget Trading Program limits ozone season NO_x emissions on all fossil-fuel fired EGUs greater than 15 MW located in Hillsborough, Merrimack, Rockingham, and Strafford Counties to 0.15 lb/MMBtu. However, a unit can meet this limit via NO_x credits."

The NPS commented that Clean Air Markets data indicates that MK1 is not meeting the 0.15 lb/MMBtu target. NPS noted that since New Hampshire is not included in the NO_x State Implementation Plan Call, the Clean Air Interstate Rule, or the Cross State Air Pollution Rule, the NPS is not aware of any NO_x trading approach that NHDES is relying on to meet the 0.15 lb/MMBtu target. In the absence of any discussion by NHDES or EPA regarding additional control of emissions from MK1, the NPS can only state that a four-factor reasonable progress analysis is required, and NPS believes it is likely that they would have similar comments regarding SO₂ and NO_x emissions from MK1 as they do for MK2.

Response: NHDES and MANE-VU undertook a four factor analysis for reasonable progress. MANE-VU identified SO₂ as the main contributor to visibility impairment for this first planning period. The result of the four factor analysis was the MANE-VU "Ask." As part of the MANE-VU "Ask," New Hampshire agreed to require MK1

¹¹ The annual 2002 SO₂ emissions from Schiller Station Unit 5 and Fraser LLC were 2,796 tons and 638 tons, respectively.

¹² For a list of the 167 highest visibility impacting EGUs, see Attachment Y of the New Hampshire Regional Haze submittal, available in the docket for this rulemaking.

to reduce SO₂ emissions by 90%. The operating permit submitted as part of the New Hampshire SIP requires MK1 to meet at least 90% reduction with the installation of the wet scrubber.¹³

NPS is correct that New Hampshire is not part of the NO_x State Implementation Plan Call, the Clean Air Interstate Rule, or the Cross State Air Pollution Rule. However, New Hampshire was included in the earlier NO_x Budget Program that was developed via a Memorandum of Understanding of the Ozone Transport Commission. See 65 FR 68078 (March 9, 2000). Since New Hampshire was not included in the subsequent trading programs, New Hampshire's program is for all intents and purposes an intrastate NO_x credit trading program. The New Hampshire NO_x Budget program requires MK1 to meet an ozone season emission limit of 0.15 lb/MMBtu or 75% NO_x control from the 1990 baseline, whichever is less stringent. NPS is correct in that MK1 is not meeting an ozone season emission limit of 0.15 lb/MMBtu, but is meeting 75% NO_x control from the 1990 baseline.

In addition to the ozone season NO_x Budget Program, MK1 is subject to the NO_x Reasonably Achievable Control Technology (RACT) program. Pursuant to RACT Order ARD-97-001 issued in accordance with New Hampshire's Env-A 1211 which was approved into the SIP on July 23, 2002 (67 FR 48033), MK1 is required to meet 18.1 tons NO_x per 24-hour calendar day when MK2 is not in full operation and 29.1 tons per calendar day when combined with MK2.

III. Final Action

EPA is approving New Hampshire's January 29, 2010 SIP revision and supplemental submittals on January 14, 2011 and August 26, 2011, as meeting the applicable implementing regulations found in 40 CFR 51.308. EPA is also approving, and incorporating into the New Hampshire SIP, New Hampshire's regulation Env-A 2300 Mitigation of Regional Haze and PSNH Merrimack Station Temporary Permit TP-0008 Flue Gas Desulfurization System dated March 9, 2009, and reissued August 2, 2010, and July 8, 2011.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 12, 2012.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

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

Subpart EE—New Hampshire

- 2. Section 52.1520 is amended by adding a new entry to the Table in paragraph (c) in alphanumeric order, and by adding new entries to the end of the Tables in paragraphs (d) and (e), to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) EPA approved regulations.

¹³ See PSNH Merrimack Station Temporary Permit TP-008 Table 4, Item 8, condition a. This

document is available in the docket for this rulemaking.

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
* Env-A 2300	* Mitigation of Regional Haze	* 1/8/11	* 8/22/12 [Insert Federal Register page number where the document begins].	*

¹ In order to determine the EPA effective date for a specific provision listed in the table, consult the **Federal Register** notice cited in this column for the particular provision.

(d) EPA-approved State Source specific requirements.

EPA-APPROVED NEW HAMPSHIRE SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date ²	Additional explanations/ § 52.1535 citation
* PSNH Merrimack Station	* TP-0008	* 7/8/2011	* 8/22/2012 [Insert Federal Register page number where the document begins].	* Flue Gas Desulfurization System.

² In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(e) Nonregulatory.

NEW HAMPSHIRE NONREGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date ³	Explanations
* New Hampshire Regional Haze SIP and its supplements.	* Statewide	* 1/29/2010; supplements submitted; 1/14/2011, 8/26/2011.	* 8/22/2012 [Insert Federal Register page number where the document begins].	*

³ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2012-20271 Filed 8-21-12; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2012-0620; A-1-FRL-9719-1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Hot Mix Asphalt Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving in part a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on January 28, 2005. Specifically, EPA is approving a revision to New Hampshire’s regulation

Env-A 2703.02 for hot mix asphalt plants. This rule establishes and requires limitations on visible emissions from all hot mix asphalt plants. This revision is consistent with the maintenance of all National Ambient Air Quality Standards (NAAQS) in New Hampshire. This action is being taken under the Clean Air Act.

DATES: This direct final rule will be effective October 22, 2012, unless EPA receives adverse comments by September 21, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2012-0620 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email*: arnold.anne@epa.gov.
3. *Fax*: (617) 918-0047.
4. *Mail*: “Docket Identification Number EPA-R01-OAR-2012-0620”, Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912.
5. *Hand Delivery or Courier*. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail code OEP05-2), Boston, MA 02109-3912. Such deliveries are only accepted during the

Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2012-0620. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or email, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are

Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency; Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, Mail Code OEP05-2, Boston, MA 02109-3912, telephone number (617) 918-1684, fax number (617) 908-0684, email simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Summary of SIP Revision
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

New Hampshire adopted regulations to limit particulate matter, visible emissions, and fugitive emissions from hot mix asphalt plants in 1995. In 2002, EPA approved Chapter Env-A 1200 "Prevention, Abatement, and Control of Stationary Source Air Pollution," Part Env-A 1207 "Asphalt Plants" into the New Hampshire State Implementation Plan (67 FR 48033). Env-A 1207 has since been recodified as Env-A 2700.

On July 27, 2004, the New Hampshire Department of Environmental Services (NH DES) proposed revisions to Env-A 2700 "Hot Mix Asphalt Plants" and held a public hearing on September 15, 2004. Subsequently, NH DES amended Env-A 2700 based on comments received from EPA and others, and adopted the regulation revisions on November 19, 2004, with an effective date of November 24, 2004. On January 28, 2005, NH DES submitted these revisions to EPA for inclusion in the New Hampshire SIP. EPA's review of the SIP submittal indicates that EPA comments on the revisions to Env-A 2700 have been adequately addressed.

At this time, EPA is only approving the New Hampshire SIP revision for Env-A 2703.02(a). EPA will take action on the remainder of Env-A 2700 at a later date. Please note that if EPA receives adverse comment on an

amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Summary of SIP Revision

On January 28, 2005, NH DES submitted to EPA amendments to Env-A 2700 Hot Mix Asphalt Plants. The rule presently in the New Hampshire SIP (Env-A 1207.02) applies to pre-June 1974 asphalt plants and provides an alternate opacity limit (60 percent opacity, No. 3 on the Ringelmann Smoke Chart) for a specified time period (3 minutes per startup). This provision did not meet all of EPA's policy requirements for source-specific startup and shutdown emission limits (EPA memorandum, September 20, 1999, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown").

NH DES has recodified and replaced Env-A 1207.02 with Env-A 2703.02 ("Visible Emission Standards for Hot Mix Asphalt Plants"). Env-A 2703.02(a) states that "The owner or operator of a hot mix asphalt plant shall not cause or allow visible fugitive emissions or visible stack emissions to exceed an average of 20 percent opacity for any continuous 6-minute period" with no exemptions. The revised rule applies to all hot mix asphalt plants regardless of construction date. Thus, the revised rule is more stringent than current SIP requirements, is consistent with EPA's policy, and meets the section 110(l) anti-backsliding requirements of the Clean Air Act.

At this time EPA is not taking action on provisions of Chapter Env-A 2700 other than Env-A 2703.02(a). EPA intends to take action on the remainder of Env-A 2700 in the near future.

III. Final Action

EPA is approving amendments to the New Hampshire Hot Mix Asphalt Plant Rule at Env-A 2703.02(a) into the New Hampshire SIP. EPA has determined that the revised Env-A 2703.02(a) meets the applicable requirements of section 110 of the Clean Air Act.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective October 22, 2012 without further notice unless

the Agency receives relevant adverse comments by September 21, 2012.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 22, 2012 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: August 7, 2012.

H. Curtis Spalding,
Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

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

Subpart EE—New Hampshire

- 2. In § 52.1520, the table in paragraph (c) is amended by adding a new entry for state citation “Env-A 2703.02(a)” in alphanumeric order to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
Env-A 2703.02(a) ...	Hot Mix Asphalt Plants.	11/4/2004	8/22/2012 [Insert Federal Register page number where the document begins]	Adopted Regulation established Hot Mix Asphalt Plant Requirements.

EPA-APPROVED NEW HAMPSHIRE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
*	*	*	*	*
[FR Doc. 2012–20500 Filed 8–21–12; 8:45 am] BILLING CODE 6560–50–P	ENVIRONMENTAL PROTECTION AGENCY			
	40 CFR Part 52			
	[EPA–R10–OAR–2012–0344, FRL–9718–9]			
	Approval and Promulgation of Implementation Plans; State of Oregon; Regional Haze State Implementation Plan			
	AGENCY: Environmental Protection Agency (EPA).			
	ACTION: Final rule.			
	SUMMARY: EPA is taking final action to approve portions of a State Implementation Plan (SIP) revision submitted by the State of Oregon on December 10, 2010 and supplemented on February 1, 2011, as meeting the requirements of Clean Air Act (CAA or the Act) section 169A and B and the regional haze regulations in 40 CFR 51.308. In a previous action on July 5, 2011, EPA approved portions of the December 10, 2010, SIP submittal as meeting the requirements for interstate transport for visibility of CAA section 110(a)(2)(D)(II) and certain requirements of the regional haze program including the requirements for best available retrofit technology (BART). 76 FR 38997. On May 23, 2012, EPA proposed approving the remaining portion of the Regional Haze SIP including those portions that address requirements of the CAA and EPA's rules that require states to set Reasonable Progress Goals (RPGs) for their Class I areas, and to develop a Long-Term Strategy (LTS) to achieve these goals. 77 FR 30454. In this Federal Register notice EPA finalizes its approval of the remaining Regional Haze SIP elements for which EPA previously took no action in the July 5, 2011 notice.	<i>www.regulations.gov</i> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. Please note that while many of the documents in the docket are available electronically at <i>http://www.regulations.gov</i> , some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, large maps or voluminous materials, is not placed on the Internet and will be publicly available only at the hard copy location. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.	35714 (July 1, 1999); see also 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).	On behalf of the State of Oregon, the Oregon Department of Environmental Quality (ODEQ) submitted its Regional Haze State Implementation Plan (Regional Haze SIP submission or SIP submittal) to EPA on December 10, 2010 and supplemented it on February 1, 2011. In a previous action EPA approved certain provisions in Oregon's Regional Haze SIP submission. 76 FR 38997. This previous action approved the BART provisions (40 CFR 51.308(e), calculation of baseline and natural conditions (40 CFR 51.308(d)(2)), and state wide emission inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I area. EPA also approved Oregon Administrative Rules OAR 340–223–0010 through 340–223–0080 (Regional Haze Rules). In that same action, EPA also approved portions of the SIP submittal as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to the visibility prong for the 1997 8-hour ozone and 1997 PM _{2.5} National Ambient Air Quality Standards (NAAQS).
	DATES: This action is effective on September 21, 2012.	FOR FURTHER INFORMATION CONTACT: Keith Rose at telephone number (206) 553–1949, <i>rose.keith@epa.gov</i> , or the above EPA, Region 10 address.		
	ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2012–0344. Generally documents in the docket are available at <i>http://</i>	SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA. Information is organized as follows:		
		Table of Contents		
		I. Background II. Final Action III. Scope of Action IV. Statutory and Executive Order Reviews		
		I. Background		
		In the CAA Amendments of 1977, Congress established a program to protect and improve visibility in the national parks and wilderness areas. See CAA section 169A. Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169B. EPA promulgated regulations in 1999 to implement sections 169A and 169B of the Act. These regulations require states to develop and implement plans to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas ¹ (Class I areas). 64 FR		In a proposed rule published on May 23, 2012, EPA proposed approving the remaining provisions of Oregon's Regional Haze SIP submission, the regional haze requirements for establishing RPGs and developing a LTS. 76 FR 38997. A detailed explanation of the Regional Haze Rule including the requirements relating to the reasonable progress goals and long term strategy, ODEQ's reasonable progress goals and long term strategy,
		¹ Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C.		7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to “mandatory Class I Federal areas.” Each mandatory Class I Federal area is the responsibility of a “Federal Land Manager.” 42 U.S.C. 7602(i). When we use the term “Class I area” in this action, we mean a “mandatory Class I Federal area.”

and EPA's reasons for approving this SIP revision were provided in the notice of proposed rulemaking on May 23, 2012, and will not be restated here. See 77 FR 30454. The public comment period for this proposed rule ended on June 22, 2012. EPA did not receive any comments on the proposal.

II. Final Action

EPA is approving the remaining portions of the Regional Haze SIP submittal from the State of Oregon, submitted on December 10, 2010 and supplemented on February 1, 2011, as meeting the remaining regional haze requirements that require states to prevent any future and remedy any existing visibility impairment in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographical area. See CAA section 169A and B and Federal Regulations in 40 CFR 51.308. Specifically included is EPA's approval of the RPGs established by Oregon and the elements of its LTS which include: (1) Ongoing Air Pollution Control Programs, (2) Measures to Mitigate Impacts of Construction Activities, (3) Emission Limitations and Schedules for Compliance, (4) Source Retirement and Replacement Schedules, (5) Smoke Management Techniques for Agricultural and Forestry Burning, and (6) Enforceability of Emission Limitations and Control Measures.

III. Scope of Action

Oregon has not demonstrated authority to implement and enforce the Oregon Administrative rules within "Indian Country" as defined in 18 U.S.C. 1151. "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Therefore, this SIP approval does not extend to "Indian Country" in Oregon. See CAA sections 110(a)(2)(A) (SIP shall include

enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have tribal

implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Consistent with EPA policy, EPA nonetheless provided a consultation opportunity to Tribes in Idaho, Oregon and Washington in letters dated January 14, 2011. EPA received one request for consultation, and we have followed-up with that Tribe.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, and Volatile organic compounds.

Dated: August 8, 2012.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c)(151)(ii)(B) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

- (c) * * *
- (151) * * *
- (ii) * * *

(B) The remaining portions of the December 20, 2010, SIP revision, which relate to establishing reasonable progress goals, and a long term strategy to achieve these reasonable progress goals.

* * * * *

■ 3. Section 52.1973 is amended by adding paragraph (g)(2) to read as follows:

§ 52.1973 Approval of plans.

* * * * *

- (g) * * *

(2) EPA approves the remaining portions of the Regional Haze SIP revision submitted by the Oregon Department of Environmental Quality on December 20, 2010, and adopted by the Oregon Department of Environmental Quality Commission on December 9, 2010, as meeting the requirements of the Clean Air Act section 169A and 40 CFR 51.308(d)(1) regarding establishing reasonable progress goals, and 51.308(d)(3) for developing a long term strategy to achieve these goals.

[FR Doc. 2012-20496 Filed 8-21-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2011-0950; FRL-9359-5]

Didecyl Dimethyl Ammonium Carbonate and Didecyl Dimethyl Ammonium Bicarbonate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the exemption from the requirement of a tolerance for residues of Didecyl Dimethyl Ammonium Carbonate and Didecyl Dimethyl Ammonium Bicarbonate, jointly referred to as DDACB on food contact surfaces when applied or used in public eating places, dairy processing equipment, and/or

food processing equipment and utensils. Lonza, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment which would provide for an increase in the final use concentration of DDACB in products eligible for the exemption from the requirement of a tolerance. As amended, the regulation will exempt solutions from the requirement of tolerance residues resulting from contact with surfaces treated with solutions where the end-use concentration of the DDACB does not exceed 400 parts per million (ppm).

DATES: This regulation is effective August 22, 2012. Objections and requests for hearings must be received on or before October 22, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION.)

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2011-0950, is available at <http://www.regulations.gov> or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Velma Noble, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 308-6233; email address: noble.velma@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Dairy Cattle Milk Production (NAICS code 11212).

- Food manufacturing (NAICS code 311).
- Beverage Manufacturing (NAICS code 3121).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2011-0950 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 22, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2011-0950, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>. Additional instructions on commenting or visiting the docket, along with more

information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Background and Statutory Findings

In the **Federal Register** of December 8, 2011 (76 FR 76674) (FRL-9328-8), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 0F7758) by Lonza Inc., 90 Boroline Road, Allendale NJ 07401. The petition requested that 40 CFR 180.940(a), be amended by establishing concentration limits for DDACB in end use solutions eligible for tolerance exemption. That notice referenced a summary of the petition prepared by Lonza Inc., the registrant, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *."

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for DDACB including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with DDACB follows.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by DDACB, part of the Aliphatic Alkyl Quaternary group of compounds, are discussed in this unit. In assessing the proposed toxicity, the toxicological endpoints were extracted from the DDAC RED (EPA-HQ-2006-0338).

The Aliphatic Alkyl Quaternaries are corrosive and highly irritating to the eye and skin, with moderate acute toxicity by oral, dermal, and inhalation routes of exposure. These chemicals are classified as "not likely" to be human carcinogens based on negative carcinogenicity in rat and mouse feeding studies using doses above the limit dose. There is no evidence of these chemicals being associated with increased susceptibility of infants and children based on two developmental toxicity studies and a 2-generation reproductive toxicity study. Lastly, they are negative for mutagenicity and neurotoxicity. Specific information on the studies received and the nature of the toxic effects from the toxicity studies can be found at <http://www.regulations.gov>. Docket ID Number EPA-HQ-OPP-2005-0338 Toxicology Disciplinary Chapter for the Reregistration Eligibility Decision (RED) for Didecyl Dimethyl Ammonium Chloride (DDAC).

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (NOAEL) from the toxicology study identified as appropriate for the risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in variations in sensitivity among members of the human population as well as other unknowns.

A detailed discussion of EPA's conclusions regarding the toxic endpoints for the Aliphatic Alkyl

Quaternaries can be found at 73 FR 37852, July 2, 2008.

IV. Aggregate Exposure

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residues in food and all other sources, including drinking water from ground water or surface water and exposure through pesticide use in gardens lawns or buildings (residential and other non-occupational exposures).

A. Dietary Exposure

1. *Food.* In evaluating dietary exposure to DDACB, EPA considered exposure under the petitioned-for exemption as well as all existing aliphatic alkyl quaternaries exemptions or tolerances in (40 CFR 180.940(a)). EPA assessed dietary exposures from DDACB in food as follows:

Aliphatic alkyl quaternaries are to be used as sanitizers on appliances, beverage bottling, counter tops, food packaging, refrigerators, tables, and utensils. The use of these actives in antimicrobial products for use on food or feed-contact surfaces and in agricultural premises may result in pesticide residues in human food. Residues from treated surfaces, such as appliances, countertops, equipment, and utensils can migrate to food coming into contact with the treated and rinsed surfaces and can be ingested by humans.

The Agency assessed acute and chronic dietary exposures from the use of DACB as a disinfectant and food-contact sanitizer on utensils, countertops, and in food/beverage processing facilities. The assessment calculated the Daily Dietary Dose (DDD) and the Estimated Daily Intake (EDI) using modified Food and Drug Administration (FDA) methodologies for utensils and the Indirect Dietary Residential Exposure Model (IDREAM) for countertops.

The EDI calculations presented in this assessment for treated indirect dietary exposures resulting from sanitizing utensils assumed that food would contact 4,000 cm² (which represents contact with treated china, glass, and silverware used by an individual who regularly eats three meals per day at an institutional or public facility) and that the residual solution remaining on the surface or pesticide migration fraction is 1 milligram/centimeter (mg/cm²) of treated area. The body weights used for this assessment were 70 kilograms (kg) for an adult male, 60 kg for an adult woman, and 10 kg for an infant. Based on data provided in a new residue study, Transferability Equivalence

among Quats and Measured Food Surrogate Transfer Efficiency (Master Record Identification Number 46870703), a conservative transfer rate of 43% was used to demonstrate the amount of residues on the surface that will be transferred to food and subsequently ingested. The maximum application rate for DDACB on utensils is 0.0033 lbs active ingredient (a.i.) per gallon of treatment solution.

There are two levels of refinement for assessing dietary exposure to antimicrobial products used on countertops. The three dimensional approach, Tier 2, was utilized for this assessment. This conservative approach uses food consumption and preparation patterns, food-specific conversion factors that relate the surface area contacting the countertop with the corresponding weight of the food item, transfer efficiency, and likelihood of contact with a countertop. Food ingredients, as presented in the model, are separated into nine categories and reflect a person's daily diet. Based on the structure of the model, available countertop residues are estimated and presented as the amount of residue that is expected to be available for each of the nine food categories. These calculated available residues are then combined with the food consumption rate, as extracted from the USDA Continuing Survey for Food Intake by Individuals (CSFII) consumption data, and a total daily exposure value is provided as the output. This value is then compared to the toxicological endpoint to determine risk to those consuming foods that have come into contact with a freshly sanitized countertop.

For the assessment of the food bottling/packaging use, EPA assumed a 100% transfer rate because the food is potentially in contact with the treated surfaces for very long periods of time. The maximum application rate for DDACB for bottling/packing of food is 0.0033 lbs a.i. per gallon of treatment solution. EDI values were calculated using an approach similar to that used for treated food utensils. Exposure was assumed to occur through the ingestion of three food products that might be packaged with treated material: Beverages (alcoholic and non-alcoholic), egg products, and milk. A calorie intake modification factor of 0.64 was applied to the EDI for a child to account for the differences between intake values among children and adults.

2. *Drinking water exposure.* DDACB outdoor uses are as an algaecide in wood preservative treatment and a slimicide in secondary oil field uses. The oil field uses are considered to be

contained. The other uses are not expected to significantly contaminate drinking water sources. Therefore, the DDACB contributions for drinking water exposure are considered to be negligible and are not quantified.

B. *Other Non-Occupational Exposure*

The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). DDACB is currently registered for the following residential non-dietary sites: Homes and day-care nurseries. EPA assessed residential exposure using the following assumptions:

- Residential exposure may occur during the application as well as post application of DDACB to indoor hard surfaces (e.g., mopping, trigger pump sprays, wiping).
- The residential handler scenarios were assessed to determine dermal and inhalation exposures.
- Residential post application scenarios such as children's exposure to treated toys and floors were also assessed to determine dermal and incidental oral exposures.
- Surrogate dermal, inhalation, and incidental oral unit exposure values were estimated using Pesticide Handler Exposure Database (PHED) data and the Chemical Manufacturers Association Antimicrobial Exposure Assessment Study (EPA, 1999). Note that for this assessment, EPA assumed that residential users complete all elements of an application (mix/load/apply) without the use of personal protective equipment.
- The duration for most residential exposures is believed to be best represented by the short-term duration (1 to 30 days). The short-term duration was chosen for this assessment because the residential handler and post-application scenarios are assumed to be performed on an episodic, not daily basis.

Specific information on the residential exposure assessment for DDACB can be found at <http://www.regulations.gov>. Docket ID Number EPA-HQ-OPP-2006-1024, Review of Petition to Amend 40 CFR 180.940 to add Didecyl Dimethyl Ammonium Carbonate/Bicarbonate.

C. *Additional Safety Factor for the Protection of Infants and Children*

1. *In general.* Section 408 of FFDCFA provides that EPA shall apply an additional tenfold ("10X") margin of safety for infants and children in the case of threshold effects to account for

prenatal and postnatal toxicity and the completeness of the data base on toxicity and EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) safety factor (SF). In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty/safety factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.*

There is no evidence that Aliphatic Alkyl ammonium chloride quaternaries result in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X except for assessments addressing inhalation exposure. For inhalation exposure assessments the 10X FQPA safety factor is retained. Those decisions are based on the following findings:

i. The toxicity database for Aliphatic Alkyl Quaternaries is complete except for a 90-day inhalation toxicity study in the rat which was requested in the Aliphatic Alkyl Quaternary Reregistration Eligibility Document. Due to the absence of the 90-day inhalation toxicity study, a FQPA safety factor of 10X has been applied to the oral endpoint to calculate inhalation risks in order to be protective of any uncertainties associated with route-to-route extrapolation.

ii. There is no indication that Aliphatic Alkyl Quaternaries are neurotoxic chemicals and there is no need for a developmental neurotoxicity study or additional uncertainty factors to account for neurotoxicity.

iii. There is no evidence that Aliphatic Alkyl Quaternaries result in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental toxicity studies or in young rats in the 2-generation reproductive toxicity study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessment was performed based on 10% transfer rate and tolerance-level residues. Similarly conservative Residential SOPs were used to assess post-application exposure to children as well as incidental oral exposure of toddlers.

These assessments will not underestimate the exposure and risks posed by Aliphatic Alkyl Quaternaries.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA's risk assessment for the Group I Cluster is based on an assessment of the cumulative exposure to all aliphatic alkyl quaternary compounds. The individual exposure scenarios in the DDAC assessments (as well as the aggregate assessment in the Aliphatic Alkyl Quaternary (DDAC) Reregistration Eligibility Decision (RED)) were developed by assuming that a DDAC compound was used on 100% of the surfaces authorized on the label that could result in human exposure and summing the percent active ingredients on the labels for all of the aliphatic alkyl quaternary compounds when used in combination. Thus, because the risk assessment for DDAC accounts for exposures to all of the aliphatic alkyl quaternary compounds, there is no need for a separate cumulative risk assessment for those compounds. The Agency has not identified any other substances as sharing a common mode of toxicity with DDACB.

VI. Aggregate Risks and Determination of Safety

1. *Dietary risk from food and feed uses.* EPA compares the estimated dietary exposures to an acute population adjusted dose (aPAD) and a chronic population adjusted dose (cPAD), 0.1 mg/kg/day, which are the same value for DDACB. Generally, a dietary exposure estimate that is less than 100% of the aPAD or the cPAD does not exceed the Agency's LOC.

The antimicrobial indirect food use acute and chronic risk estimates from exposure to treated utensils and countertops are below the Agency's LOC. For adult males, the acute and chronic dietary exposure risk estimates are 9.9% for utensils and 0.8% for countertops. The aPAD and cPAD for adult females (13–69) is 11.5% for utensils. The aPAD from countertops for adult females is 0.8% and the cPAD is 0.5%. For children ages 1–2, the most highly exposed population subgroup, the acute and chronic dietary risk estimates are 68.9% for utensils and 2.6% and 1.8%, respectively for acute

and chronic dietary risks for countertops. Therefore, dietary exposure estimates are below Agency's LOC for all population subgroups. The antimicrobial indirect food use chronic risk estimates from exposure to treated food packaging and beverage bottles are also below the Agency's LOC.

Specific information on the dietary exposure assessment for DDACB can be found at <http://www.regulations.gov>. Docket ID Number EPA-HQ-2006-1024, Review of Petition to Amend 40 CFR 180.940 to add Didecyl Dimethyl Ammonium Carbonate/Bicarbonate.

2. *Non-occupational risk.* Aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Using the exposure assumptions described in this unit for other non-occupational exposures, the MOEs are greater than the target of 1,000 for the inhalation route of exposure and 10 for dermal exposure, with the exception of the short term dermal exposures in females which has an MOE of 9. However, there is no significant concern for the proposed increase in use concentrations from 240 ppm to 400 ppm, with regard to dermal exposure, considering the contributing MOEs used to calculate the MOE of 9 were derived using conservative assumptions for the unit exposures and quantity handled. Furthermore there is a low likelihood that all scenarios (mopping, wiping, trigger pump spraying, immersing items into a solution and wearing treated clothing items) that were used to derive an MOE of 9 for dermal exposure would occur simultaneously.

Based on the toxicological and exposure data discussed in this preamble, EPA concludes that DDACB will not pose a risk under reasonably foreseeable circumstances. Accordingly, EPA finds that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to DDACB residues.

VII. Other Considerations

An analytical method for food is not needed. Food-contact sanitizers are typically regulated by the State health departments to ensure that the food industry is using products in compliance with the regulations in 40 CFR 180.940. The end-use solution that is applied to the food-contact surface is analyzed not food items that may come into contact with treated surface. An analytical method is available to analyze the use dilution that is applied to food-contact surfaces. A titration method is used to determine the total amount of

quaternary compound. If the use solution is a mixture of ADBAC and DDACB, then high pressure liquid chromatogram with ultraviolet visible (HPLC-UV) is used to determine the amount of ADBAC. The amount of DDACB is determined by calculating the difference between the total amount of quaternary compounds and ADBAC.

VIII. Conclusion

This regulation amends the exemption from the requirement of a tolerance for residues of DDACB under 40 CFR 180.940(a) resulting from an increase in the final use concentration from 240 ppm to 400 ppm on food contact surfaces in public eating establishments, on dairy processing equipment and food processing equipment and utensils.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions

of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995

(NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Aliphatic alkyl quaternaries, Food-contact sanitizers, Pesticides and pests, Quaternary ammonium compounds, Reporting and recordkeeping requirements.

Dated: August 9, 2012.

Joan Harrigan-Farrelly,
Director, Antimicrobials Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.940(a), the table is amended by revising in its entirety, the entry for “Quaternary ammonium compounds, didecyl dimethyl ammonium carbonate/didecyl dimethyl ammonium bicarbonate” which immediately precedes the pesticide chemical which reads in part “Silver ions resulting * * *” to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *
(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
Quaternary ammonium compounds, didecyl dimethyl ammonium carbonate/didecyl dimethyl ammonium bicarbonate.	148788-55-0/148812-654-1.	When ready for use, the end-use concentration of these specific ammonium compounds is not to exceed 400 ppm of active quaternary ammonium compound.

* * * * *
[FR Doc. 2012-20663 Filed 8-21-12; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2006-0766; FRL-9354-3]

RIN 2070-AJ28

Pesticide Tolerance Crop Grouping Program III; Revisions to General Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises the current pesticide tolerance crop grouping regulations, which allow for the establishment of tolerances for multiple related crops based on data from a representative set of crops. This rule expands upon existing stone fruit and tree nut crop groups by establishing

new crop subgroups and adding new commodities. This is the third in a series of planned crop group updates expected to be promulgated over the next several years.

DATES: This final rule is effective October 22, 2012.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2006-0766 is available electronically at <http://www.regulations.gov>, or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 305-7390; email address: nollen.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the agency taking?

This final rule, under the provisions of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, amends EPA’s regulations governing crop group tolerances for pesticides. Specifically, the rule expands upon existing stone fruit and tree nut crop groups by adding new commodities and establishes crop subgroups for the new stone fruit crop group. This final rule is the third in a series of planned crop group updates expected to be promulgated in the next several years.

B. What is the agency's authority for taking this action?

EPA is authorized to establish tolerances for pesticide chemical residues in food under FFDCA section 408. EPA establishes tolerances for each pesticide based on the potential risks to human health posed by that pesticide. A tolerance is the maximum permissible residue level established for a pesticide in raw agricultural produce and processed foods. The crop group regulations currently in 40 CFR 180.40 and 180.41 enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group. Crop group regulations are promulgated under section 408(e)(1)(C) which authorizes EPA to establish "general procedures and requirements to implement [section 408]." 21 U.S.C. 346a(e)(1)(C).

C. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer or food manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document might apply to them. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112).
- Pesticide manufacturing (NAICS code 32532).

D. What are the incremental costs and benefits of this action?

EPA prepared an analysis of the potential costs and benefits associated with the establishment of crop groupings when it issued the first proposed rule in this series of rulemakings, which published in the **Federal Register** of May 23, 2007 (77 FR 28920). This analysis is contained in "Economic Analysis Proposed Expansion of Crop Grouping Program," a copy of which is available in the docket for this action. In general, the Agency anticipates that revisions to the crop grouping program will result in no appreciable costs or negative impacts to consumers, specialty crop producers, pesticide registrants, human health, or the environment. The impacts of this rule are measured primarily on a qualitative basis. However, the rule is expected to reduce the cost of generating residue data for pesticide

registration and new food uses, because it will have the effect of reducing the number of residue chemistry studies, because fewer representative crops would need to be tested under a crop grouping scheme than would otherwise be required.

Benefits of the rule can be shown through an example of the impact of the changes to Crop Group 3 that were accomplished in a prior rulemaking (72 FR 69150, December 7, 2007). That rulemaking expanded Crop Group 3, Bulb Vegetable, from 7 to 25 crops, an increase of 18 from the original crop group. Prior to the expansion of that subgroup, adding tolerances for 18 new crops would have required at least 18 field trials at a cost of approximately \$5.4 million (assuming \$300,000 per field trial).

This action is intended to promote more extensive use of crop group tolerances; in particular, it will assist in making available lower-risk pesticides for minor crops both domestically and in countries that export food to the United States. In addition, expanding crop groups will greatly increase the efficiency of IR-4 and EPA in registering pesticides on specialty crops and reduce the administrative costs of both the IR-4 testing process and the EPA review process.

II. The Proposed Rule

EPA published a notice of proposed rulemaking in the **Federal Register** of November 9, 2011 (76 FR 69693) (FRL-8887-8). Written comments were received from three parties in response to the proposal: A private citizen; The Embassy of the Republic of Korea; and from the American Pistachio Growers trade association.

III. Response to Comments

In this section, EPA describes the major provisions of the proposed rule, the comments received on each provision and EPA's responses to those comments, including EPA's determination if any modification of the proposed rule is warranted.

A. Crop Group 12-12: Stone Fruit Group

1. *Revise the proposed crop group name.* The final rule retains the pre-existing Crop Group 12 and adds a new group titled "Crop Group 12-12: Stone Fruit Group." Although the new group was proposed as "Crop Group 12-11: Stone Fruit Group," this change has been effected in order to reflect the correct year of establishment, which is 2012. Therefore, this final rule adds a new stone fruit group, "Crop Group 12-12: Stone Fruit Group," but retains the pre-existing Crop Group 12.

2. *Add commodities.* The final rule expands the stone fruit crop group from the existing 11 commodities to 22 commodities in Crop Group 12-12: Stone Fruit Group.

EPA received one comment from a private citizen that noted that the commodity chokecherry, which was proposed to be included in the revised Crop Group 12-12: Stone Fruit Group and Cherry subgroup 12-12A, is already established in Crop Group 13-07: Berry and Small Fruit Group and Large Shrub/Tree Berry Subgroup 13-07C. As a general practice, the Agency will avoid having a commodity as a member of more than one crop group. Accordingly, EPA revisited the proposal to include chokecherry in the revised crop group.

Although chokecherry is a stone fruit, its fruit size is closer to elderberry and mulberry, the representative commodities for Large Shrub/Tree Berry Subgroup 13-07C, rather than sweet or tart cherry, the representative commodities for Cherry Subgroup 12-12A. The diameter for chokecherry is 0.3 inches (0.8 cm), elderberry is 0.3-0.5 inches (0.8-1.3 cm), mulberry is 0.5 inches (1.3 cm), and sweet cherry is 1.4 inches (3.6 cm). Cherry, the commodity proposed as the representative for chokecherry in the revised Crop Subgroup 12-12A, has a diameter that is approximately 4.7 times larger than the chokecherry, while both elderberry and mulberry are approximately the same size as chokecherry. The application of pesticides on commodities with smaller diameters (surface area to volume ratio) often results in higher residues than on larger commodities. Therefore, the EPA has determined that it is appropriate to retain chokecherry in the previously established Crop Group 13-07 and Subgroup 13-07C and will not include chokecherry in Crop Group 12-12: Stone Fruit Group or Cherry Subgroup 12-12A.

Additionally, a comment was received from the Embassy of the Republic of Korea requesting that Chinese jujube (*Ziziphus jujuba* Mill.) be reconsidered as a member of Crop Group 12-12: Stone Fruit Group. Chinese jujube was originally included in the petition to the Agency as a proposed member of the revised stone fruit crop group. However, when EPA first reviewed the available supporting information, EPA concluded that it might be more appropriate to include Chinese jujube in a future proposed tropical fruit, edible peel crop group. The Agency noted that Chinese jujube is a member of a different plant family (*Rhamnaceae* instead of *Rosaceae*) as a rationale for this decision. Further information about the original petition

to the Agency to include Chinese jujube and EPA's previous review of the commodity can be found in the docket, identified by document ID No. EPA-HQ-OPP-2006-0766-0044.

However, after reviewing the Korean data submitted with the comment and literature from the United States, EPA finds that Chinese jujube growth and cultural practices are similar to some stone fruits, such as cherries and small varieties of plums, and should therefore be similar to other stone fruit in terms of pesticide residue exposure.

Chinese jujube is a traditional East Asian fruit crop mainly cultivated in temperate regions of China, Korea, Taiwan, and Japan. Chinese jujube has large leaf canopies shading the small sized fruits, and the fruit is botanically considered a stone fruit or "drupe." The Chinese jujube is also deciduous; the crop loses its leaves in the fall and has a dormant period in the winter, similar to other members of Crop Group 12-12: Stone Fruit Group. Additionally, the flower to harvest time as well as the fruit shape, size, and smooth skin texture is similar to the plum.

The Chinese jujube was introduced into the United States from China in 1908, and it is widely distributed in the southern states as both an ornamental crop and potential minor food crop. Improved varieties of Chinese jujube are available to growers from commercial nursery catalog companies, and there has been recent research in cultivating the crop in the United States as a potential profitable minor crop. For these reasons, EPA concludes it would be appropriate to include Chinese jujube as a member of Crop Group 12-12: Stone Fruit Group, and as a member of the Plum Subgroup 12-12C.

Finally, EPA has revised the taxonomic names for several commodities in Crop Group 12-12: Stone Fruit Group, in order to reflect the currently accepted taxonomic name or names. Based on the decision to remove chokecherry and add Chinese jujube to the revised Crop Group 12-12: Stone Fruit Group, the final rule expands Crop Group 12-12: Stone Fruit Group to include 22 commodities.

3. *Create new subgroups.* The final rule retains the proposed addition of three subgroups to Crop Group 12-12: Stone Fruit Group, and updates the names of the subgroups to reflect the correct year that the subgroups are being established. Based on the information considered, chokecherry has been removed from inclusion in Crop Subgroup 12-12A, and Chinese jujube has been added to Crop Subgroup 12-12C. Therefore, the three subgroups are being established as follows:

i. *Cherry Subgroup 12-12A.* (Representative commodities—Sweet cherry or Tart cherry). Five commodities are included in this subgroup.

ii. *Peach Subgroup 12-12B.* (Representative commodity—Peach). Two commodities are included in this subgroup.

iii. *Plum Subgroup 12-12C.* (Representative commodities—Plum or Prune plum). Fifteen commodities are included in this subgroup.

EPA adopts these proposals as final, with the changes noted in this section.

B. Crop Group 14-12: Tree Nut Group

1. *Revise the proposed crop group name.* The final rule retains the pre-existing Crop Group 14 and adds a new group titled "Crop Group 14-12: Tree Nut Group." Although the new group was proposed as "Crop Group 14-11: Tree Nut Group," this change has been effected in order to reflect the correct year of establishment, which is 2012. Therefore, this final rule adds a new tree nut group, "Crop Group 14-12: Tree Nut Group," but retains the pre-existing Crop Group 14.

2. *Add commodities.* The final rule expands the tree nut crop group from the existing 12 commodities to 39 commodities in Crop Group 14-12: Tree Nut Group.

EPA received one comment from the American Pistachio Growers trade association that supported including pistachio in the revised tree nut crop group. They noted that including pistachio will, "* * * provide the pistachio growers with the ability to use crop tools necessary to combat pests," and further noted that, "* * * growers, processors, marketers, and consumers * * * will benefit from including pistachios in the tree nut group." EPA agrees with these comments.

EPA has revised the taxonomic names for several commodities in Crop Group 14-12: Tree Nut Group, in order to reflect the currently accepted taxonomic name or names. Therefore, EPA adopts these proposals as final, with the changes noted in this section.

IV. The Final Rule

After fully considering all comments, EPA is finalizing the proposed rule with the revisions discussed previously. Other than these revisions, EPA is finalizing the rule as proposed, based on the rationale set forth in the proposed rule.

V. Implementation

When a crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will (1) retain the pre-existing crop group in 40

CFR 180.41; (2) insert the revised crop group immediately after the pre-existing crop group in the Code of Federal Regulations; and (3) title the revised crop group in a way that clearly differentiates it from the pre-existing crop group.

The revised crop group will retain roughly the same name and number as the pre-existing group, except the number will be followed by a dash and the final digits of the year established (e.g., Crop Group 8-10).

EPA will initially retain pre-existing crop groups that have been superseded by revised crop groups. EPA will not establish new tolerances under the pre-existing groups. Further, EPA plans to eventually convert tolerances for any pre-existing crop group to tolerances with coverage under the revised crop group. This conversion will be effected both through the registration review process and in the course of evaluating new uses for a pesticide. EPA requests that petitioners for tolerances address this issue in their petitions. For existing petitions for which a Notice of Filing has been published, the Agency will attempt to conform these petitions to this rule.

VI. Statutory and Executive Order Reviews

A. Executive Orders 12866 and 13563

This action is not a "significant regulatory action" under the terms of Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) and was therefore not reviewed by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, entitled "Improving Regulation and Regulatory Review" (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This rule does not impose any new information collection requirements that would require additional review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable.

The information collection activities associated with the submission of a petition to request a tolerance are already approved under OMB control number 2070-0024 (EPA ICR No. 0597.10), and the changes to the crop grouping regulations do not change the covered activities such that additional OMB review or approval is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 551-553, 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. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of this 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 does not have any direct adverse impacts on small businesses, small non-profit organizations, or small local governments. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify under section 605(b) of the RFA if the rule relieves regulatory burdens or otherwise has a positive economic effect on all of the small entities subject to the rule.

As discussed previously, this rule provides regulatory relief and regulatory flexibility. The new crop groups ease the process for pesticide manufacturers

to obtain pesticide tolerances on greater numbers of crops. Pesticides will be more widely available to growers for use on crops, particularly specialty crops.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531-1538, EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, this rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

This action will not have "federalism implications" as specified in Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), because this action 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 the Order. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175

This action will not have "tribal implications" as specified in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments:" (65 FR 67249, November 9, 2000), because it will not have any effect on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045

EPA interprets Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. Executive Order 13045 does not apply to this rule because this action is not designated as an "economically significant regulatory action" as defined by Executive Order 12866 (see Unit III.A.), nor does it establish an environmental standard, or otherwise have a disproportionate effect on children.

H. Executive Order 13211

This action is not a "significant energy action" as defined in Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

This action does not involve technical standards that would require the consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), 15 U.S.C. 272 note.

J. Executive Order 12898

This action does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, this action does not involve special consideration of environmental justice related issues as specified in Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

VII. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, pesticides and pests.

Dated: July 31, 2012.

James Jones,

Assistant Administrator for Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.41 is amended as follows:

■ a. Redesignate paragraphs (c)(17) through (c)(26) as paragraphs (c)(18)

through (c)(27), respectively, and add a new paragraph (c)(17).
 ■ b. Redesignate newly redesignated paragraphs (c)(21) through (c)(27) as paragraphs (c)(22) through (c)(28), respectively, and add a new paragraph (c)(21).

These amendments read as follows:
§ 180.41 Crop group tables.
 * * * * *
 (c) * * *
 (17) *Crop Group 12–12: Stone Fruit Group.*

(i) *Representative commodities.* Sweet cherry or Tart cherry; Peach; and Plum or Prune plum.
 (ii) *Commodities.* The following Table 1 is a list of all commodities included in Crop Group 12–12.

TABLE 1—CROP GROUP 12–12: STONE FRUIT GROUP

Commodities	Related crop subgroup
Apricot (<i>Prunus armeniaca</i> L.)	12–12C
Apricot, Japanese (<i>Prunus mume</i> Siebold & Zucc.)	12–12C
Capulin (<i>Prunus serotina</i> Ehrh. var. <i>salicifolia</i> (Kunth) Koehne)	12–12A
Cherry, black (<i>Prunus serotina</i> Ehrh.)	12–12A
Cherry, Nanking (<i>Prunus tomentosa</i> Thunb.)	12–12A
Cherry, sweet (<i>Prunus avium</i> (L.) L.)	12–12A
Cherry, tart (<i>Prunus cerasus</i> L.)	12–12A
Jujube, Chinese (<i>Ziziphus jujuba</i> Mill.)	12–12C
Nectarine (<i>Prunus persica</i> (L.) Batsch var. <i>nucipersica</i> (Suckow) C.K. Schneid)	12–12B
Peach (<i>Prunus persica</i> (L.) Batsch var. <i>persica</i>)	12–12B
Plum (<i>Prunus domestica</i> L. subsp. <i>domestica</i>)	12–12C
Plum, American (<i>Prunus americana</i> Marshall)	12–12C
Plum, beach (<i>Prunus maritima</i> Marshall)	12–12C
Plum, Canada (<i>Prunus nigra</i> Aiton)	12–12C
Plum, cherry (<i>Prunus cerasifera</i> Ehrh.)	12–12C
Plum, Chickasaw (<i>Prunus angustifolia</i> Marshall)	12–12C
Plum, Damson (<i>Prunus domestica</i> L. subsp. <i>insititia</i> (L.) C.K. Schneid.)	12–12C
Plum, Japanese (<i>Prunus salicina</i> Lindl.; <i>P. salicina</i> Lindl. var. <i>salicina</i>)	12–12C
Plum, Klamath (<i>Prunus subcordata</i> Benth.)	12–12C
Plum, prune (<i>Prunus domestica</i> L. subsp. <i>domestica</i>)	12–12C
Plumcot (<i>Prunus</i> hybr.)	12–12C
Sloe (<i>Prunus spinosa</i> L.)	12–12C
Cultivars, varieties, and/or hybrids of these.	

(iii) *Crop subgroups.* The following Table 2 identifies the crop subgroups for Crop Group 12–12, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 12–12: SUBGROUP LISTING

Representative commodities	Commodities
Crop subgroup 12–12A. Cherry subgroup	
Cherry, sweet or Cherry, tart	Capulin; Cherry, black; Cherry, Nanking; Cherry, sweet; Cherry, tart; cultivars, varieties, and/or hybrids of these.
Crop subgroup 12–12B. Peach subgroup	
Peach	Peach; Nectarine; cultivars, varieties, and/or hybrids of these.
Crop subgroup 12–12C. Plum subgroup	
Plum or Prune plum	Apricot; Apricot, Japanese; Jujube, Chinese; Plum; Plum, American; Plum, beach; Plum, Canada; Plum, cherry; Plum, Chickasaw; Plum, Damson; Plum, Japanese; Plum, Klamath; Plumcot; Plum, prune; Sloe; cultivars, varieties, and/or hybrids of these.

* * * * *
 (21) *Crop Group 14–12. Tree Nut Group.*

(i) *Representative commodities.*
 Almond and Pecan.

(ii) *Commodities.* The following is a list of all commodities included in Crop Group 14–12.

CROP GROUP 14–12: TREE NUT GROUP

- African nut-tree (*Ricnodendron heudelotii* (Baill.) Heckel)
- Almond (*Prunus dulcis* (Mill.) D.A. Webb)
- Beechnut (*Fagus grandifolia* Ehrh.; *F. sylvatica* L.)
- Brazil nut (*Bertholletia excelsa* Humb. & Bonpl.)
- Brazilian pine (*Araucaria angustifolia* (Bertol.) Kuntze)
- Bunya (*Araucaria bidwillii* Hook.)

CROP GROUP 14–12: TREE NUT GROUP—Continued

Bur oak (*Quercus macrocarpa* Michx.)
 Butternut (*Juglans cinerea* L.)
 Cajou nut (*Anacardium giganteum* Hance ex Engl.)
 Candlenut (*Aleurites moluccanus* (L.) Willd.)
 Cashew (*Anacardium occidentale* L.)
 Chestnut (*Castanea crenata* Siebold & Zucc.; *C. dentata* (Marshall) Borkh.; *C. mollissima* Blume; *C. sativa* Mill.)
 Chinquapin (*Castaneapumila* (L.) Mill.)
 Coconut (*Cocos nucifera* L.)
 Coquito nut (*Jubaea chilensis* (Molina) Baill.)
 Dika nut (*Irvingia gabonensis* (Aubry-Lecomte ex O'Rorke) Baill.)
 Ginkgo (*Ginkgo biloba* L.)
 Guiana chestnut (*Pachira aquatica* Aubl.)
 Hazelnut (Filbert) (*Corylus americana* Marshall; *C. avellana* L.; *C. californica* (A. DC.) Rose; *C. chinensis* Franch.)
 Heartnut (*Juglans ailantifolia* Carrière var. *cordiformis* (Makino) Rehder)
 Hickory nut (*Carya cathayensis* Sarg.; *C. glabra* (Mill.) Sweet; *C. laciniata* (F. Michx.) W. P. C. Barton; *C. myristiciformis* (F. Michx.) Elliott; *C. ovata* (Mill.) K. Koch; *C. tomentosa* (Lam.) Nutt.)
 Japanese horse-chestnut (*Aesculus turbinata* Blume)
 Macadamia nut (*Macadamia integrifolia* Maiden & Betche; *M. tetraphylla* L.A.S. Johnson)
 Mongongo nut (*Schinziophyton rautanenii* (Schinz) Radcl.-Sm.)
 Monkey-pot (*Lecythis pisonis* Cambess.)
 Monkey puzzle nut (*Araucaria araucana* (Molina) K. Koch)
 Okari nut (*Terminalia kaernbachii* Warb.)
 Pachira nut (*Pachira insignis* (Sw.) Savigny)
 Peach palm nut (*Bactris gasipaes* Kunth var. *gasipaes*)
 Pecan (*Carya illinoensis* (Wangenh.) K. Koch)
 Pequi (*Caryocar brasiliense* Cambess.; *C. villosum* (Aubl.) Pers; *C. nuciferum* L.)
 Pili nut (*Canarium ovatum* Engl.; *C. vulgare* Leenh.)
 Pine nut (*Pinus edulis* Engelm.; *P. koraiensis* Siebold & Zucc.; *P. sibirica* Du Tour; *P. pumila* (Pall.) Regel; *P. Gerardiana* Wall. ex D. Don; *P. monophylla* Torr. & Frém.; *P. quadrifolia* Parl. ex Sudw.; *P. pinea* L.)
 Pistachio (*Pistacia vera* L.)
 Sapucaia nut (*Lecythis zabucaja* Aubl.)
 Tropical almond (*Terminalia catappa* L.)
 Walnut, black (*Juglans nigra* L.; *J. hindsii* Jeps. ex R. E. Sm.; *J. microcarpa* Berland.)
 Walnut, English (*Juglans regia* L.)
 Yellowhorn (*Xanthoceras sorbifolium* Bunge)
 Cultivars, varieties, and/or hybrids of these

* * * * *

[FR Doc. 2012–20667 Filed 8–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 268**

[EPA–HQ–RCRA–2010–0851; FRL–9715–3]

Land Disposal Restrictions: Site-Specific Treatment Variance for Hazardous Selenium-Bearing Waste Treated by U.S. Ecology Nevada in Beatty, NV**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA (or the Agency) is granting a site-specific treatment variance, under the Land Disposal Restrictions program, to U.S. Ecology Nevada in Beatty, Nevada for the treatment of a hazardous selenium-bearing waste generated by the Owens-Brockway Glass Container Company in Vernon, California. The Agency has determined that the chemical properties of the waste generated by the Owens-

Brockway Glass Container Corporation differ significantly from the waste used in developing the Land Disposal Restrictions treatment standard for selenium-bearing wastes, and as such cannot be treated to the specified treatment level of 5.7 mg/L for selenium, as measured by the Toxicity Characteristic Leaching Procedure (TCLP). The site-specific treatment variance provides an alternative treatment standard of 59 mg/L TCLP for selenium, with the condition that the waste-to-reagent ratio not exceed 1:0.45.

DATES: This final rule will be effective August 22, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2010–0851. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, because for example, it may be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Certain material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Jesse Miller, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (MC 5304 P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone (703) 308–1180; fax (703) 308–0522; or miller.jesse@epa.gov.

SUPPLEMENTARY INFORMATION:**A. Does this action apply to me?**

This action applies only to U.S. Ecology Nevada located in Beatty, Nevada.

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I. Background

A. Basis for Land Disposal Restrictions Treatment Variances

Under sections 3004(d) through (g) of the Resource Conservation and Recovery Act (RCRA), the land disposal of hazardous wastes is prohibited unless such wastes are able to meet the Land Disposal Restrictions (LDR) treatment standards (or treatment standards) established by EPA (or the Agency). Under section 3004(m) of RCRA, EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." EPA interprets this language to authorize treatment standards based on the performance of the best demonstrated available technology (BDAT). This interpretation was upheld by the D.C. Circuit in *Hazardous Waste Treatment Council v. EPA*, 886 F.2d 355 (D.C. Cir. 1989).

The Agency recognizes, however, that there may be wastes that cannot be treated to the levels specified in the regulations (*see* 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more

difficult to treat than those wastes evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986).¹ For such wastes, EPA has a process by which a generator or treater may seek a treatment variance (*see* 40 CFR 268.44). If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

B. Basis of the Current Selenium Treatment Standard

Treatment of selenium poses special difficulties. In particular, it can be technically challenging to treat wastes containing selenium in combination with other metals e.g., cadmium, lead and/or chromium because of their different chemical properties and solubility curves (62 FR 26041, May 12, 1997).

The current treatment standard for a waste exhibiting the toxicity characteristic for selenium (RCRA Hazardous Waste D010) is based upon the performance of stabilization on low concentration selenium wastes. When the Agency developed the treatment standard for selenium, EPA believed that wastes containing high concentrations of selenium were rarely generated and land disposed (59 FR 47980, September 19, 1994). The Agency also stated that it believed that, for most wastes containing high concentrations of selenium, recovery of the selenium would be feasible using recovery technologies currently employed by copper smelters and copper refining operations (*Id.*). The Agency further stated in 1994, that it did not have any performance data for selenium recovery, but available information indicated that some recovery of elemental selenium out of certain types of scrap material and other wastes was practiced in the United States.²

¹ According to § 268.44(a)(1), a petitioner may obtain a site-specific variance if "it is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method."

² Because selenium is a non-renewable resource, and because the wastes in question contain high selenium concentrations, EPA's preference would be to recover the selenium in an environmentally sound manner. However, based on information contained in the *Mineral Commodity Summaries 2010* published by the U.S. Department of the Interior, U.S. Geological Survey, the amount of domestic production of secondary selenium is estimated to be very small because most of the materials eligible for possible secondary smelting (e.g., scrap xerographic and electronic materials) were exported for recovery of the contained selenium.

In 1994, the Agency used performance data from the stabilization of a mineral processing waste, that was characteristically hazardous (RCRA Hazardous Waste D010), to set the national treatment standard for selenium. At that time, we determined that this characteristically-hazardous mineral processing waste represented the most difficult-to-treat selenium waste. This untreated waste contained up to 700 ppm total selenium and 3.74 mg/L selenium, as measured by the Toxicity Characteristic Leaching Procedure (TCLP). The resulting post-treatment levels of selenium in the TCLP leachate were between 0.154 mg/L and 1.80 mg/L, which (after considering the range of treatment process variability) led to EPA establishing a national treatment standard of 5.7 mg/L TCLP for D010 selenium nonwastewaters.³ In the Phase IV LDR final rule, the Agency determined that a treatment standard of 5.7 mg/L TCLP, continued to be appropriate for D010 nonwastewaters (63 FR 28556, May 26, 1998). The Agency also changed the universal treatment standard (UTS) for selenium nonwastewaters from 0.16 mg/L to 5.7 mg/L TCLP.

II. Basis for Today's Determination

Under 40 CFR 268.44, facilities can apply for a site-specific treatment variance in cases where a waste that is generated under conditions specific to only one site cannot be treated to the specified LDR treatment standards. In such cases, the generator(s) or the treatment facility may apply to the Administrator, or to EPA's designated representative, (in this case the Assistant Administrator for Solid Waste and Emergency Response) for a site-specific variance. The applicant for a site-specific variance must demonstrate that, because the physical or chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to the specified levels or by the specified methods. There are other grounds for obtaining variances, but this is the only provision relevant to this action.

³ The calculation of the LDR treatment standard was based on a specific method, sometimes called "C 99," which has been used in other LDR rulemakings. This methodology seeks to account for process variability (including variability that may be attributed to sampling and analytical processes). *See* 63 FR 28556, May 26, 1998 and the document, *Final—Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology*, USEPA. October 23, 1991.

III. Development of This Variance

A. U.S. Ecology Nevada Petition

On September 16, 2008, U.S. Ecology Nevada (USEN) in Beatty, Nevada submitted a petition requesting a site-specific treatment variance from the LDR treatment standards for hazardous selenium-bearing waste generated by the Owens-Brockway Glass Container Company (Owens-Brockway) in Vernon, California. Owens-Brockway operates a glass manufacturing facility that generates approximately 50 to 100 tons per year of electrostatic precipitator (ESP) dust requiring management as a hazardous waste. The ESP dust is generated by the glass furnace air emissions control system and is hazardous due to its high concentrations of leachable arsenic (RCRA Hazardous Waste D004), cadmium (RCRA Hazardous Waste D006), lead (RCRA Hazardous Waste D008), and selenium (RCRA Hazardous Waste D010). USEN submitted analytical data demonstrating that the chemical properties of the waste differed significantly from the waste analyzed in developing the LDR treatment standard.⁴ They also submitted data demonstrating that the waste could not be treated to the specified level of 5.7 mg/L TCLP for selenium. USEN requested an alternative treatment standard of 59 mg/L TCLP, which was calculated using analytical treatment data from a stabilization mixture of ferrous sulfate, quick lime and sodium sulfide flakes with a 1:0.45 waste to reagent ratio.⁵

B. Notices on Granting a Site Specific Treatment Variance to USEN

On April 6, 2011, the Agency issued a Direct Final rule (76 FR 18921) and a parallel Proposal (76 FR 19003) granting a site-specific treatment variance to USEN for the treatment and disposal of

hazardous selenium-bearing waste generated by Owens-Brockway. The site-specific treatment variance provided for an alternative treatment standard of 59 mg/L TCLP with the condition that the waste to reagent ratio not exceed 1:0.45. The Agency concluded that USEN had demonstrated that the chemical properties of the waste generated by Owens-Brockway differed significantly from the waste analyzed in developing the LDR treatment standard, and that the waste could not be treated to the specified level of 5.7 mg/L TCLP for selenium, necessitating an alternative treatment standard.

The Direct Final rule and the parallel Proposal also included an action to withdraw the site-specific treatment variance issued to Chemical Waste Management (CWM) in Kettleman Hills, California for this same waste.⁶ The Agency issued both a Direct Final and a parallel Proposal because EPA considered these actions to be non-controversial. However, EPA stated that if adverse comment was received, the Direct Final rule would be withdrawn and we would proceed with a subsequent final rule. The Agency received no comments on granting a site-specific treatment variance to USEN, however, one adverse comment was received on withdrawing the CWM variance. As a result, on May 24, 2011, the Direct Final rule was withdrawn (76 FR 30027). The comment can be found in the docket supporting this rule.

EPA is not taking action on the proposal to withdraw the existing site-specific treatment variance granted to CWM. EPA has authorized the State of California to grant and administer site-specific treatment variances under 40 CFR 268.44. [See 75 FR at 60401 (September 10, 2010)]. As a result, California now has sole authority to deal with issues pertaining to treatment variances for entities within its borders, including whether to withdraw the treatment variance to CWM for Owens-Brockway selenium-bearing waste, and any other issues related to that

treatment variance.⁷ Necessarily, therefore, EPA is not responding to any of the comments submitted on this issue, since all comments pertain to issues within the scope of the authorized California program.

IV. Granting USEN a Site-Specific Treatment Variance

EPA is promulgating, as proposed, a site-specific treatment variance, from the LDR treatment standards, for hazardous selenium bearing waste generated by Owens-Brockway and managed by USEN of Beatty, Nevada. With the information provided to the Agency as part of their petition, EPA has concluded that the chemical properties of Owens-Brockway's selenium-bearing waste differ significantly from the waste used in developing the LDR treatment standard and that the generated waste cannot be treated to the specified treatment level of 5.7 mg/L TCLP. The site-specific treatment variance provides an alternative treatment standard of 59 mg/L for selenium with the condition that the waste to reagent ratio not exceed 1:0.45 when the waste is treated and disposed at USEN's permitted hazardous waste facility. The Agency received no comments disagreeing with the Agency's proposal.

V. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action grants a site-specific treatment variance to USEN for the treatment of hazardous selenium-bearing waste generated by Owens-Brockway under RCRA's LDR program. The Office of

⁴ Total selenium concentrations in the electrostatic precipitator (ESP) dust generated at the Owens-Brockway facility range from 2,400 mg/kg to 5,700 mg/kg. The untreated waste has a leachable selenium concentration ranging from 228 mg/L to 440 mg/L TCLP. In addition, the untreated waste has a leachable arsenic concentration ranging from 3.3 mg/L to 8.6 mg/L TCLP, a leachable cadmium concentration ranging from 3.9 mg/L to 11.0 mg/L TCLP, and a leachable lead concentration ranging from <0.10 mg/L to 16.3 mg/L TCLP.

⁵ The selenium concentrations used to calculate the alternative treatment standard were (in mg/L TCLP) 49.34, 51.39, 49.39, 43.91, and 54.34. The most effective treatment recipe was determined using a 50 gram sample of waste where reagents were listed as a percent of waste sample weight. For example, 20% ferrous sulfate, 15% quick lime, and 10% sodium sulfide flakes would measure out as 10 grams of ferrous sulfate, 7.5 grams of quick lime, and 5 grams of sodium sulfide flakes for a total of 22.5 grams of total reagent. The waste to reagent ratio was then calculated by dividing 22.5 by 50 to get a waste to reagent ratios of 1:0.45.

⁶ EPA considered that technology-based treatment standards, whether adopted by generally applicable rule or through a variance to the generally applicable rule, serve as the measure of when threats posed by land disposal of the hazardous waste are "minimized," as required by RCRA section 3004(m). See 55 FR 6640 (February 26, 1990). Thus, EPA has typically limited the standards adopted by a variance to a single standard. See 70 FR 44505 (August 3, 2005). We continued this practice by issuing a Direct Final rule and parallel Proposal to withdraw the current variance granted to CWM (69 FR 6567, February 11, 2004), determining that the treatment standard issued to CWM is less stringent than the standard we would be granting, both with respect to potential concentrations of selenium released to the environment and also the waste to reagent ratios.

⁷ It should be noted that EPA is making a conforming change to footnote 7 of the table in section 40 CFR 268.44. The footnote originally read, "D010 wastes generated by these two facilities must be treated by Chemical Waste Management, Inc. at their Kettleman Hills facility in Kettleman City, California." The two facilities referred to Owens-Brockway and a second facility, St. Gobain Containers, El Monte, CA, that also has an existing variance for selenium waste. The footnote now reads, "D010 wastes generated by this facility must be treated by Chemical Waste Management, Inc. at its Kettleman Hills facility in Kettleman City, California."

Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR 268.42 and .44 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0085. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. *Regulatory Flexibility Act*

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

This site-specific treatment variance does not create any new requirements. Rather, it establishes an alternative treatment standard for a specific waste that applies to only one facility, USEN located in Beatty, Nevada. Therefore, we hereby certify that this rule will not add any new regulatory requirements to small entities. This rule, therefore, does not require a regulatory flexibility analysis.

D. *Unfunded Mandates Reform Act of 1995*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector. This action would not impose any new duties on the states hazardous waste program. EPA has determined, therefore, that this rule would not contain regulatory requirements that might significantly or uniquely affect small governments in that the authority for this action exists with the Federal government. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. *Executive Order 13132: Federalism*

This action does not have federalism implications. This rule will not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action grants a site-specific treatment variance applicable to one facility. Thus, Executive Order 13132 would not apply to this action.

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

This action would not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action is a site-specific treatment variance that applies to only one facility, which is not a tribal facility or located on tribal lands. Thus, Executive Order 13175 would not apply to this action.

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

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

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it would not be a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide

Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this rule will not have a disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The site-specific treatment variance being finalized applies to a selenium bearing waste that will be treated and disposed in an existing, permitted RCRA facility, ensuring protection to human health and the environment. Therefore, the rule will not result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

K. *Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule, when finalized, and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 268

Environmental Protection, Hazardous Waste, and Variances.

Dated: August 10, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

■ 1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 2. In § 268.44, the table in paragraph (o) is amended as follows:

■ a. By revising the existing entry for “Owens Brockway Glass Container Company, Vernon, CA.”

■ b. By adding in alphabetical order an additional entry for “Owens Brockway Glass Container Company, Vernon, CA.”

■ c. Republishing the entry for “St. Gobain Containers, El Monte, CA.”

■ d. By revising footnote 7.

■ e. By adding a new footnote 15.

■ f. By adding a new footnote 16.

The revisions and additions read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *
(o) * * *

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name ¹ and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
* * * Owens Brockway Glass Container Company, Vernon, CA ⁶ .	D010	Standards under § 268.40.	Selenium	NA	NA	51 mg/L TCLP ..	(¹⁵)
* * * Owens Brockway Glass Container Company, Vernon, CA ⁶ .	D010	Standards under § 268.40.	Selenium	NA	NA	59 mg/L TCLP ..	(¹⁶)
* * * St. Gobain Containers, El Monte, CA ^{5 7} .	D010	Standards under § 268.40.	Selenium	NA	NA	25 mg/L TCLP ..	NA
* * *							

¹ A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

⁵ Alternative D010 selenium standard only applies to dry scrubber solid from glass manufacturing wastes.

⁶ Alternative D010 selenium standard only applies to electrostatic precipitator dust generated during glass manufacturing operations.

⁷ D010 wastes generated by this facility must be treated by Chemical Waste Management, Inc. at its Kettleman Hills facility in Kettleman City, California.

¹⁵ This alternative standard applies only to D010 wastes generated by this facility and treated by Chemical Waste Management, Inc. at its Kettleman Hills facility in Kettleman City, California.

¹⁶ This alternative standard applies only to D010 wastes generated by this facility and treated by U.S. Ecology Nevada at its facility in Beatty, Nevada. This alternative treatment standard is conditioned on the waste-to-reagent ratio not exceeding 1 to 0.45.

* * * * *
[FR Doc. 2012–20504 Filed 8–21–12; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2012–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering

Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the

address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The

community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Jefferson (FEMA Docket No.: B-1244).	City of Birmingham (11-04-6751P).	December 2, 2011; December 9, 2011; <i>The Birmingham News</i> .	The Honorable William Bell, Mayor, City of Birmingham, 710 North 20th Street, Birmingham, AL 35203.	April 9, 2012	010116
Jefferson (FEMA Docket No.: B-1244).	City of Mountain Brook (11-04-6751P).	December 2, 2011; December 9, 2011; <i>The Birmingham News</i> .	The Honorable Lawrence Terry Oden, Mayor, City of Mountain Brook, 928 Montclair Road, Mountain Brook, AL 35213.	April 9, 2012	010128
Jefferson (FEMA Docket No.: B-1244).	Unincorporated areas of Jefferson County (11-04-6751P).	December 2, 2011; December 9, 2011; <i>The Birmingham News</i> .	The Honorable David Carrington, President, Jefferson County Commission, 716 Richard Arrington, Jr. Boulevard North, Birmingham, AL 35203.	April 9, 2012	010217
Mobile (FEMA Docket No.: B-1248).	Unincorporated areas of Mobile County (11-04-1740P).	November 24, 2011; December 1, 2011; <i>The Press-Register</i> .	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	March 30, 2012	015008
Mobile (FEMA Docket No.: B-1240).	Unincorporated areas of Mobile County (11-04-5528P).	December 1, 2011; December 8, 2011; <i>The Press-Register</i> .	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	April 6, 2012	015008
Arizona:					
Maricopa (FEMA Docket No.: B-1240).	City of Glendale (11-09-3464P).	November 24, 2011; December 1, 2011; <i>The Arizona Business Gazette</i> .	The Honorable Elaine M. Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, AZ 85301.	March 30, 2012	040045
Maricopa (FEMA Docket No.: B-1240).	City of Peoria (11-09-3464P).	November 24, 2011; December 1, 2011; <i>The Arizona Business Gazette</i> .	The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	March 30, 2012	040050
Colorado:					
Arapahoe (FEMA Docket No.: B-1244).	City of Centennial (11-08-0818P).	December 8, 2011; December 15, 2011; <i>The Littleton Independent</i> .	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	April 13, 2012	080315
Arapahoe (FEMA Docket No.: B-1244).	City of Centennial (11-08-1095P).	December 8, 2011; December 15, 2011; <i>The Littleton Independent</i> .	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	April 13, 2012	080315
Florida:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Broward (FEMA Docket No.: B-1248).	City of Deerfield Beach (12-04-0283P).	December 2, 2011; December 9, 2011; <i>The Sun-Sentinel</i> .	The Honorable Peggy Noland, Mayor, City of Deerfield Beach, 150 Northeast 2nd Avenue, Deerfield Beach, FL 33441.	November 22, 2011	125101
Broward (FEMA Docket No.: B-1248).	Town of Lauderdale-By-The-Sea (11-04-7642P).	November 3, 2011; November 10, 2011; <i>The Sun-Sentinel</i> .	The Honorable Roseann Minnet, Mayor, Town of Lauderdale-By-The-Sea, 4501 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.	October 26, 2011	125123
Georgia: Bryan (FEMA Docket No.: B-1253).	City of Richmond Hill (11-04-4401P).	December 7, 2011; December 14, 2011; <i>The Bryan County News</i> .	The Honorable E. Harold Fowler, Mayor, City of Richmond Hill, 40 Richard Davis Drive, Richmond Hill, GA 31324.	November 29, 2011	130018
North Carolina: Dare (FEMA Docket No.: B-1244).	Unincorporated areas of Dare County (11-04-5020P).	September 8, 2011; September 15, 2011; <i>The Coastland Times</i> .	The Honorable Warren Judge, Chairman, Dare County Board of Supervisors, 954 Marshall C. Collins Drive, Manteo, NC 27954.	August 30, 2011	375348

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

Dated: August 8, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012-20632 Filed 8-21-12; 8:45 am]

BILLING CODE 9110-12-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[IB Docket No. 11-133; FCC 12-93]

Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts a new approach to its review of foreign ownership in common carrier radio station licensees, where the foreign ownership is held in the licensee through U.S.-organized entities that do not control the licensee. This action responds to pleadings filed in response to the Notice of Proposed Rulemaking initiating this docket and to the Public Notice in this docket seeking further comment on the new approach.

DATES: Effective August 22, 2012.

FOR FURTHER INFORMATION CONTACT:

Kathleen Collins or Susan O'Connell, Policy Division, International Bureau, FCC, (202) 418-1460 or via the Internet at Kathleen.Collins@fcc.gov and Susan.O'Connell@fcc.gov

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in IB Docket No. 11-133, FCC 12-93, adopted August 17, 2012, and released August 17, 2012. The full text of this document is available for

inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone: (800) 378-3160, fax: (202) 488-5563, or via its web site, <http://www.bcpweb.com>. The complete text also is available on the Commission's Web site at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-93A1.pdf. To request the document in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Summary of First Report and Order

1. On April 11, 2012, the International Bureau, on behalf of the Commission, issued a Public Notice in this docket (77 FR 24452, April 24, 2012) inviting comment on the legal and policy implications of forbearing under section 10 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 160, from applying section 310(b)(3) of the Act to certain foreign ownership interests in common carrier licensees, where those interests are held through U.S.-organized entities that do not control the licensee. The First Report and Order forbears, pursuant to section 10(a) of the Act, from applying the 20 percent foreign ownership limit set forth in section 310(b)(3) of the Act to the class of common carrier licensees in which foreign ownership in the licensee is held through U.S.-organized entities that do not control the licensee, to the extent the Commission determines such foreign ownership is consistent with the public interest under the policies and procedures the Commission has adopted

for the public interest review of foreign ownership subject to section 310(b)(4) of the Act. The First Report and Order refers to this class of licensees as "licensees subject to section 310(b)(3) forbearance." The forbearance approach applies only to such foreign ownership in common carrier licensees and not to broadcast or other licensees covered by section 310(b)(3). Nor does the approach apply to foreign ownership held in a licensee other than indirectly through an intervening U.S.-organized entity that does not control the licensee.

2. Section 10(a) of the Act enables the Commission to forbear from applying any regulation or any provision of the Act to a telecommunications carrier or service, or a class of telecommunications carriers or services, if the Commission determines that forbearance satisfies the following three-pronged test: (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. 160(a).

3. The First Report and Order finds that forbearing from applying section 310(b)(3)'s 20 percent foreign equity and voting limits to the class of common carrier licensees in which foreign interests in the licensee are held through U.S.-organized entities that do not control the licensee, to the extent such foreign ownership serves the public interest as determined under the

policies and procedures the Commission uses for assessing foreign ownership of the controlling U.S.-organized parents of common carrier licensees under section 310(b)(4), satisfies each of the three section 10 criteria. The First Report and Order requires licensees subject to section 310(b)(3) forbearance to file a petition for declaratory ruling or similar request to obtain Commission approval *before* foreign ownership held in the licensee through U.S.-organized entities that do not control the licensee, together with foreign ownership held in the licensee itself, exceeds 20 percent of the licensee's equity interests and/or 20 percent of its voting interests.

4. In the First Report and Order, the Commission concludes that, under the first prong of section 10, it is not necessary to apply the foreign ownership limits in section 310(b)(3) to licensees subject to section 310(b)(3) forbearance to ensure that their charges and practices are just and reasonable and not unjustly or unreasonably discriminatory. Based on the Commission's experience in applying its policies under section 310(b)(4), the Commission finds no evidence that the foreign ownership of a common carrier licensee, in and of itself, is directly relevant to the carrier's compliance with the requirements of sections 201 and 202 of the Act that charges, practices, classifications, and regulations be just and reasonable and not unjustly or unreasonably discriminatory. In addition, the Commission has other, more tailored tools at its disposal, such as section 201, 202, and 208 of the Act, to ensure that rates, practices and classifications of common carrier licensees are just and reasonable and not unjustly or unreasonably discriminatory.

5. The Commission also concludes that, under the section prong of section 10, it is unnecessary for the protection of consumers to apply section 310(b)(3)'s 20 percent limit to foreign interests in licensees subject to section 310(b)(3) forbearance. Under the forbearance approach, the Commission will give notice and seek public comment on a petition for declaratory ruling or similar request asking for approval of proposed foreign equity and/or voting interests in a common carrier licensee over 20 percent. This notice and comment process will inform any Commission decision to grant a petition for declaratory ruling to exceed section 310(b)(3)'s 20 percent limit and allow the Commission to assess any potential harm to consumers.

6. The Commission concludes, under the third prong of section 10, that the

public interest would be served by not applying the foreign ownership limit of section 310(b)(3) to licensees subject to section 310(b)(3) forbearance—where the licensee has greater than 20 percent foreign ownership held through U.S.-organized entities that do not control the licensee—for the same reasons that the public interest is served when the Commission allows, under section 310(b)(4), greater than 25 percent foreign ownership in the controlling U.S.-organized parent of a common carrier licensee under otherwise identical circumstances. In the context of common carrier licensees, the Commission discerns no public interest distinction between the two situations.

7. By incorporating the Commission's section 310(b)(4) policies and procedures, the forbearance approach will protect the national security objectives underlying the Act. These policies and procedures provide Executive Branch expert agencies the opportunity to review proposed foreign ownership in the controlling U.S.-organized parents of common carrier licensees for any national security, law enforcement, or public safety issues. The forbearance approach will provide the Executive Branch agencies the same opportunity to assess proposed foreign ownership in licensees subject to section 310(b)(3) forbearance.

8. In addition, the forbearance approach will ensure that foreign ownership from World Trade Organization (WTO) Member countries will be reviewed under the Commission's open entry standard, whether the foreign investment is held through U.S.-organized entities that control the licensee or through U.S.-organized entities that do not control the licensee. The forbearance approach also comports with commenters' request in this docket that the Commission treat all "indirect" foreign ownership in a common carrier licensee in a manner consistent with the Commission's section 310(b)(4) policies and procedures so as to further the objectives of the WTO Basic Telecom Agreement. Conforming the Commission's foreign ownership policies for sections 310(b)(3) and 310(b)(4) will clarify and simplify Commission regulation of foreign ownership of common carrier licensees. The forbearance approach also will enhance competitive market conditions for common carrier licensees by allowing them and their potential owners to structure foreign investment in the licensee in a manner that best accommodates their financial considerations and business needs.

9. The forbearance approach requires a licensee to file a petition for declaratory ruling or similar request seeking Commission approval before foreign ownership held in the licensee through U.S.-organized entities that do not control the licensee, together with foreign ownership held in the licensee itself, exceeds 20 percent of the licensee's equity interests and/or 20 percent of its voting interests. The Commission, or the International Bureau on delegated authority, will place the request on notice for public comment and forward the petition to the Executive Branch agencies for review. Following conclusion of this process, the Commission, or the International Bureau on delegated authority, will issue a declaratory ruling as to whether the proposed foreign ownership is in the public interest. The licensee shall not be allowed to have foreign ownership under section 310(b)(3) in excess of 20 percent unless and until the Commission or the International Bureau has granted the licensee's request.

10. The Commission finds that the benefits of adopting the forbearance approach outweigh the costs. By forbearing from applying the section 310(b)(3) foreign ownership limit to the subject class of common carrier licensees, licensees and their potential owners will have flexibility in the structuring of their investment, free of a statutory constraint. The Commission anticipates that the costs of the approval process for proposed foreign ownership of licensees subject to section 310(b)(3) forbearance will be far less for licensees than the costs they have to incur in structuring their investments to comply with the section 310(b)(3) limit. Moreover, under the forbearance approach, the approval process will be consistent with the Commission's policy framework for foreign ownership of the controlling U.S. parents of licensees under section 310(b)(4). For these reasons, the Commission expects this approach to reduce unnecessary costs and burdens on common carrier licensees. Finally, the forbearance approach will not compromise the Commission's ability to carry out its statutory duties under section 310(b) of the Act, including protection of national security and law enforcement interests.

11. The First Report and Order defers consideration, to a later stage of the proceeding, of the comments urging the Commission to simplify the section 310(b)(4) requirements and apply those revised requirements to the evaluation of foreign interests in a common carrier licensee held through U.S.-organized entities that do not control the licensee.

Regulatory Flexibility Certification

12. The Regulatory Flexibility Act of 1980, as amended (RFA),¹ requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴ A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

13. The approach adopted in the First Report and Order will remove a statutory constraint on common carrier licensees, by forbearing from applying the 20 percent ownership limit under section 310(b)(3) to the class of common carrier licensees in which the foreign ownership is held in the licensee through intervening U.S.-organized entities that do not control the licensee. Instead of prohibiting foreign ownership in excess of 20 percent under section 310(b)(3), the Commission will assess whether the proposed foreign ownership in excess of 20 percent is in the public interest through an approval process that is consistent with its policies and procedures for approval of foreign ownership in a U.S.-organized entity that controls a licensee, under section 310(b)(4). The Commission believes that the new approach will reduce costs and burdens currently imposed on common carrier licensees, including those licensees that are small entities, while continuing to ensure that the Commission has the information it needs to carry out its statutory duties. Therefore, the Commission certifies that

the new approach will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the First Report and Order, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.⁵ This certification also will be published in the **Federal Register**.⁶

Paperwork Reduction Act of 1995 Analysis

14. The First Report and Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The information collection requirements for the section 310(b) foreign ownership approval process are included in OMB Control No. 3060–0686. In addition, therefore, this document does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Report to Congress

15. The Commission has included a copy of the First Report and Order in a report sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

16. *It is ordered*, pursuant to sections 1, 2, 4(i), 4(j), 5(c), 10, 303(r), 308(b), 309, 310(b), 310(d), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 160, 303(r), 308(b), 309, 310(b), 310(d), and 403, that the First Report and Order in IB Docket No. 11–133 IS ADOPTED.

17. *It is further ordered* that the requirements of this First Report and Order *shall be effective* upon publication in the **Federal Register**.⁷

18. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Regulatory Flexibility Certification, to

the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–20704 Filed 8–21–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–51; RM–11647; DA 12–1260]

Radio Broadcasting Services; Westfield, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Connoisseur Media of Erie, LLC, allots Channel 265A at Westfield, New York, as its first local transmission service. Channel 265A can be allotted to Westfield consistent with the minimum distance separation requirements of the Rules with a site restriction 3.4 kilometers (2.1 miles) west of the community. The reference coordinates are 42–18–51 NL and 79–37–04 WL. The allotment of Channel 265A at Westfield is located 320 kilometers (199 miles) from the Canadian border. Therefore, Canadian concurrence has been requested and approved by the Canadian government.

DATES: Effective September 17, 2012.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s *Report and Order*, adopted August 2, 2012, and released August 3, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission’s duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email www.BCPIWEB.com. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability

¹ *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. 605(b).

³ 5 U.S.C. 601(6).

⁴ 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**.”

⁵ 5 U.S.C. 605(b).

⁶ *Id.*

⁷ *See* 47 CFR 1.103, 1.427(b). As set forth above, by forbearing from applying the strict section 310(b)(3) foreign ownership limit to the subject class of common carrier licensees, we afford these licensees and their potential owners greater flexibility in the structuring of their investment, free of a statutory constraint. Our action thereby “relieves a restriction” within the meaning of 5 U.S.C. 553(d)(1).

Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Westfield, Channel 265A.

[FR Doc. 2012–20682 Filed 8–21–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3001, 3002, 3003, 3004, 3005, 3006, 3012, 3018, 3022, 3023, 3033, 3035, 3036, 3042, 3045, 3052, and 3053

[Docket No. DHS–2009–0085]

RIN 1601–AA28

Homeland Security Acquisition Regulation (HSAR); Revision Initiative [HSAR Case 2009–002]

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Final rule.

SUMMARY: DHS is issuing a final rule amending multiple sections of the Homeland Security Acquisition Regulation (HSAR). These amendments align existing content with the Federal Acquisition Regulation (FAR); implement Section 695 of the Post-Katrina Emergency Management Reform Act of 2006 by restricting the length of certain noncompetitive contracts entered into by the Department of Homeland Security to facilitate the response to or recovery from a natural disaster, act of terrorism, or other manmade disaster; clarify agency acquisition regulations; and make editorial corrections.

DATES: *Effective Date:* September 21, 2012.

FOR FURTHER INFORMATION CONTACT: Teresa McConahie, Office of the Chief Procurement Officer, Department of Homeland Security, (202) 447–0271.

SUPPLEMENTARY INFORMATION:

I. Background

II. Discussion of Final Rule

III. Regulatory Analyses

- A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act
- D. Executive Order 13132 (Federalism)
- E. National Environmental Policy Act

I. Background

This final rule amends the Department's acquisition regulation which was initially issued in 2003. 68 FR 67871 (Dec. 4, 2003), as amended at 71 FR 25767 (May 2, 2006). On September 13, 2010, DHS published a notice of proposed rulemaking NPRM, with a public comment period ending on November 12, 2010. 75 FR 55529. DHS received no public comments on this NPRM. DHS is now adopting the proposed rule, with minor changes, as final.

II. Discussion of Final Rule

In the NPRM, DHS proposed various changes to the Homeland Security Acquisition Regulations (HSAR), including changes to 48 CFR part 3006 implementing section 695 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109–295, 120 Stat. 1394, 1460 (Oct. 4, 2006). This final rule implements the majority of the changes described in the “Discussion of Proposed Rule” section of the NPRM. See 75 FR 55530–55532.

Additionally, as a result of further internal review, DHS is making several minor changes to the proposed rule in this final rule. The changes are administrative in nature and do not change the substance of the rule. The changes to the proposed rule include: (1) Adding an “s” to the word “System” in the phrase “DHS Sensitive System Handbook” at 3004.470–2; changing the phrase “DHS legal counsel” to “legal counsel” at 3003.204–(a); and correcting the citation at 3003.1003(a) to read “(FAR) 48 CFR 52.203–13” in place of “(FAR) 49 CFR 52.203–13”. DHS is correcting these inadvertent typographical errors to ensure the final rule is clear and precise.

DHS is also making a technical change by removing the proposed change at (HSAR) section 3009.403 designating the DHS Heads of Contracting Activity as the DHS Suspension and Debarment Officials.

The Secretary of Homeland Security has approved a new Suspension and Debarment program which eliminates the Heads of the Contracting Activities as Suspension and Debarment Officials. The change in the proposed rule is no longer necessary and is not included in this final rule.

DHS is also correcting the title of the FEMA HCA at 3002.101 to read “Director, Office of Acquisition Management (FEMA)” in place of “Director, Procurement (FEMA)”. This change is necessary due to a change in the naming convention for this office.

In the NPRM, DHS proposed to delete paragraph (d) of clause 3052.216–71, Determination of Award Fee, to align the HSAR with the OMB guidance, Appropriate Use of Incentive Contracts (Dec. 4, 2007). This final rule also revises the date of the entire clause to distinguish the existing version of the clause from the revised version.

The NPRM also proposed the inclusion of paragraph (k)(1) of 3052.204–71 Alternate I regarding contractor employee access. In this final rule, the proposed change to paragraph (k)(1) is not included because a similar provision already exists at (HSAR) 3004.470–2, citing to the DHS Sensitive Systems Policy Directive 4300A and the DHS 4300A Sensitive Systems Handbook both of which address contractor employee access.

Throughout this final rule, references to Title 41 of the United States Code have been revised to reflect the recodification of Title 41 under Public Law 111–350, January 4, 2011.

III. Regulatory Analyses

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

This is not a significant regulatory action under Section 6(b) of Executive Order 12866, as supplemented by Executive Order 13563, and the Office of Management and Budget has not reviewed this final rule. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the term “small entities” comprises of small businesses, not for profit organizations that are independently owned and operated and are not dominant in their fields, and government jurisdictions with populations of less than 50,000. DHS certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act because the rule applies to internal approval procedures, supplements the Federal Acquisition Regulations, and is intended to clarify or eliminate existing agency acquisition regulations and policies.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval any reporting requirements inherent in a rule. The Paperwork Reduction Act applies to this final rule. However, the information collection requirements imposed by the provisions 3052.205–70 and 3052.212–70 are currently covered by the approved information collection requirements for provisions (OMB Clearance numbers 1600–0003, Post-Contract Award Information, and 1600–0005, Solicitation of Proposal Information for Award of Public Contracts). DHS considers that any changes due to the use of these clauses will be within the estimated hours for the existing approved OMB clearance. The clause at 3052.203–70 does not create a new information collection requirement. It provides a format for contractors to use when making a disclosure under FAR 3.1003 and 52.203–13. The FAR disclosure requirements are approved under OMB Clearance Number 9000–0164.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Use of these two information collections, 1600–0003 and 1600–0005, has been approved by OMB until January 31, 2012, and February 28, 2015, respectively. The extension for 1600–0003 is currently under review at OMB.

D. Executive Order 13132 (Federalism)

This final rule will not have 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. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this rule does not warrant the preparation of a federalism impact statement.

E. National Environmental Policy Act

We have analyzed this final rule under Department of Homeland Security Management Directive 023–01 which guides the Department in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321–4370f), and have made a determination this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule, which does not involve any extraordinary circumstances, is categorically excluded under paragraphs A3(b) and A3(d) in Table I of Appendix A of Directive 023–01 because it implements legislation and amends acquisition regulations without changing the regulations' environmental effect.

List of Subjects in 48 CFR Parts 3001, 3002, 3003, 3004, 3005, 3006, 3012, 3018, 3022, 3023, 3033, 3035, 3036, 3042, 3045, 3052 and 3053

Government procurement.

Daniel L. Clever,

Deputy Chief Procurement Officer,
Department of Homeland Security.

Accordingly, DHS amends 48 CFR parts 3001, 3002, 3003, 3004, 3005, 3006, 3012, 3018, 3022, 3023, 3033, 3035, 3036, 3042, 3045, 3052, and 3053 as follows:

- 1. The authority citation for 48 CFR parts 3001, 3002, 3003, 3004, 3005, 3006, 3022, 3023, 3033, 3035, 3036, 3042, 3045, and 3053 is revised to read as follows:

Authority: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

PART 3001—FEDERAL ACQUISITION REGULATION SYSTEM

- 2. Amend Subpart 3001.1 by adding section 3001.103 to read as follows:

3001.103 Authority.

The HSAR is issued by DHS's Chief Procurement Officer, who is the Senior Procurement Executive (SPE), see 41 U.S.C. 1702 and DHS Delegation Number 0702, under authority of 5 U.S.C. 301–302, the Office of Federal Procurement Policy Act, Pub. L. No. 93–400, 88 Stat. 796 (1974), including sections 22 and 25, 41 U.S.C. 1707, 1302 and 1303, and (FAR) 48 CFR part 1, subpart 1.3.

- 3. Revise section 3001.105–2 to read as follows:

3001.105–2 Arrangement of regulations.

(a) General. The HSAR, which encompasses both Department-wide and Component-unique guidance, conforms to the arrangement and numbering system prescribed by (FAR) 48 CFR 1.105–2. Guidance that is unique to a Component contains the organization's acronym or abbreviation directly following the title. The following acronyms and abbreviations apply:

DHS Management (MGMT), including the Office of Procurement Operations (OPO) and the Office of Selective Acquisitions (OSA);

Federal Emergency Management Agency (FEMA);

Federal Law Enforcement Training Center (FLETC);

Transportation Security Administration (TSA);

U.S. Coast Guard (USCG);

U.S. Customs and Border Protection (CBP);

U.S. Immigration and Customs Enforcement (ICE); and

U.S. Secret Service (USSS).

- 4. Revise section 3001.105–3 to read as follows:

3001.105–3 Copies.

Official versions of the HSAR are available in the Code of Federal Regulations, as supplemented and revised from time to time by the **Federal Register**, both of which are available from the Government Printing Office in paper and electronic form. The HSAR is also available in electronic form at <http://www.dhs.gov>. A convenient but unofficial up-to-date version of the HSAR is also available from the Government Printing office at <http://www.gpoaccess.gov/ecfr/index.html>. The Homeland Security Acquisition Manual (HSAM), which complements the HSAR, can also be found at <http://www.dhs.gov>.

- 5. In section 3001.301, revise paragraph (a)(1) to read as follows:

3001.301 Policy.

(a)(1) The HSAR is issued for Departmental guidance according to the policy cited in (FAR) 48 CFR 1.301. The HSAR establishes uniform Department of Homeland Security policies and procedures for all acquisition activities within the Department of Homeland Security. Component supplemental acquisition regulations to be inserted in the HSAR as a HSAR supplement regulation must be reviewed and approved by the Chief Procurement Officer (CPO) before the CPO authorizes and submits the proposed content for publication in the **Federal Register** under (FAR) 48 CFR part 1, subparts 1.3 and 1.5.

* * * * *

3001.301–70 [Amended]

- 6. Amend section 3001.301–70 in paragraph (a) introductory text by removing “20598” and adding “20528” in its place.

- 7. In section 3001.301–71, revise paragraph (c) to read as follows:

3001.301–71 Effective Date.

* * * * *

(c) When required by law, contracting officers must modify existing contracts to include HSAR changes. Otherwise, and where feasible, contracting officers should consider using the Changes clause or other suitable authority, to modify existing contracts to include HSAR changes.

■ 8. In section 3001.303, revise paragraph (a)(3) to read as follows:

3001.303 Publication and codification.

(a) * * *

(3) Coverage in HSAR chapter 30 that supplements the FAR will use part, subpart, section, and subsection numbers ending in “70” through “89”. A series of numbers beginning with “70” is used for provisions and clauses (e.g., (HSAR) 48 CFR 3001.301–70).

* * * * *

3001.304 [Amended]

■ 9. Amend section 3001.304 in paragraph (a) by adding the words “Department of” before the words “Homeland Security” in the first sentence.

3001.403 [Amended]

■ 10. Amend section 3001.403 by removing the word “deviation” in the first sentence and adding the word “deviations” in its place.

3001.602–3 [Amended]

■ 11. Amend section 3001.602–3 by removing the words “Department of Homeland Security (DHS)” in the first sentence and adding in their place “DHS”.

PART 3002—DEFINITIONS OF WORDS AND TERMS

■ 12. Amend section 3002.101 by removing the definition of “Simplified acquisition threshold” and revising the definitions of “Component”, “Head of the Contracting Activity (HCA)”, “Senior Procurement Executive (SPE)”, and the introductory paragraph of the “Sensitive Information” definition to read as follows:

3002.101 Definitions.

* * * * *

Component means the following entities for purposes of this chapter:

- (1) DHS Management (MGMT), including the Office of Procurement Operations (OPO) and the Office of Selective Acquisitions (OSA);
- (2) Federal Emergency Management Agency (FEMA);
- (3) Federal Law Enforcement Training Center (FLETC);

(4) Transportation Security Administration (TSA);

(5) U.S. Coast Guard (USCG);

(6) U.S. Customs and Border Protection (CBP);

(7) U.S. Immigration and Customs Enforcement (ICE); and

(8) U.S. Secret Service (USSS).

* * * * *

Head of the Contracting Activity (HCA) means the official who has overall responsibility for managing the contracting activity. For DHS, the HCAs are:

(1) Director, Office of Procurement Operations (OPO);

(2) Director, Office of Selective Acquisitions (OSA);

(3) Director, Office of Acquisition Management (FEMA);

(4) Chief, Procurement Division (FLETC);

(5) Assistant Administrator for Acquisition (TSA);

(6) Director of Contracting and Procurement (USCG);

(7) Executive Director, Procurement (CBP);

(8) Director, Office of Acquisition Management (ICE); and

(9) Chief, Procurement Operations (USSS).

* * * * *

Senior Procurement Executive (SPE) for the Department of Homeland Security means the DHS Chief Procurement Officer (CPO), who is the individual appointed pursuant to 41 U.S.C. 1702 to be responsible for management direction of the procurement system of DHS, including implementation of the unique procurement policies, regulations, and standards of DHS.

Sensitive Information, as used in this Chapter, means any information which if lost, misused, disclosed, or, without authorization, is accessed or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

* * * * *

3002.270 [Amended]

■ 13. Amend the abbreviation list entry in section 3002.270 by removing “HCA Head of Contracting Activity” and adding in its place “HCA Head of the Contracting Activity”.

PART 3003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 14. Revise section 3003.101–3 to read as follows:

3003.101–3 Agency regulations.

The United States Office of Government Ethics has promulgated regulations applicable to the entire Executive Branch that address the conduct matters referenced in (FAR) 48 CFR 3.101–3. See 5 CFR vol. 3, ch. XVI, subch. B. The Department of Homeland Security has also issued Management Directive 0480.1, Ethics/Standards of Conduct.

■ 15. Revise section 3003.204 to read as follows:

3003.204 Treatment of violations.

(a) The HCA is the official designated to make the determination under (FAR) 48 CFR 3.204(a) whether a gratuities violation has occurred. If the HCA has been personally and substantially involved in the specific procurement, the advice of legal counsel should be sought to determine whether the CPO should designate an alternate decision maker.

(b) The HCA shall ensure that the hearing procedures required by (FAR) 48 CFR 3.204(b) are afforded to the contractor. Legal counsel shall be consulted regarding the appropriateness of the hearing procedures that are established.

(c) If the HCA determines that the alleged gratuities violation occurred the HCA shall consult with legal counsel regarding appropriate action and notify the Office of Inspector General.

■ 16. Add Subpart 3003.10 to read as follows:

Subpart 3003.10—Contractor Code of Business Ethics and Conduct

Sec.

3003.1003 Requirements.

3003.1004 Contract clauses.

Subpart 3003.10—Contractor Code of Business Ethics and Conduct**3003.1003 Requirements.**

(a) Contractor requirements. Contractors making written disclosures under the clause at (FAR) 48 CFR 52.203–13 must use the electronic Contractor Disclosure Form at <http://www.oig.dhs.gov>. Contractors making disclosures under contracts which do not contain the clause at (FAR) 48 CFR 52.203–13 are encouraged to also use this electronic form.

3003.1004 Contract clauses.

(a) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.203-70, Instructions for Contractor Disclosure of Violations, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.203-13.

PART 3004—Administrative Matters

■ 17. Amend section 3004.470-2 by revising paragraph (a) to read as follows:

3004.470-2 Policy.

(a) DHS's policies and procedures on contractor personnel security requirements are set forth in various management directives (MDs), Directives, and Instructions. MD 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information describes how contractors must handle sensitive but unclassified information. The DHS Sensitive Systems Policy Directive 4300A and the DHS 4300A Sensitive Systems Handbook, provide the policies and procedures on security for Information Technology resources. Compliance with these policies and procedures, as amended, is required.

* * * * *

3004.470-3 [Amended]

■ 18. Amend section 3004.470-3 in paragraph (b) in the second sentence by removing the word "Officers" and adding "officers" in its place.

3004.804-1 [Removed]

■ 19a. Remove section 3004.804-1.

■ 19b. In section 3004.804-570, revise paragraphs (a)(1) through (a)(3) to read as follows:

3004.804-570 Supporting closeout documents.

(a) * * *

(1) DHS Form 700-3, Contractor's Release (e.g., see (FAR) 48 CFR 52.216-7);

(2) DHS Form 700-2, Contractor's Assignment of Refunds, Rebates, Credits and Other amounts (e.g., see (FAR) 48 CFR 52.216-7);

(3) DHS Form 700-1, Cumulative Claim and Reconciliation Statement (e.g., see (FAR) 48 CFR 4.804-5(a)(13)); and

* * * * *

PART 3005—PUBLICIZING CONTRACT ACTIONS

■ 20. Amend Subpart 3005.4 by adding sections 3005.470, 3005.470-1, and 3005.470-2 to read as follows:

3005.470 Contractor award announcements, advertisements, and releases.

3005.470-1 Policy.

(a) DHS policy requires its contracting officers to restrict DHS contractors from referring to its DHS contract(s) in commercial advertising in a manner that states or implies the Government approves or endorses the contractor's products or services or considers them superior to other products or services. The intent of this policy is to prevent the appearance of Government bias toward any product or service.

(b) The Department's contractors share the responsibility for protecting sensitive and classified information related to efforts under their contracts. For any contract that involves sensitive or classified information, prior to the release of any contract award announcement, advertisement, or other release of information pertaining to the contract, the contractor must obtain the approval of the responsible contracting officer.

3005.470-2 Contract clauses.

(a) Insert the clause at (HSAR) 48 CFR 3052.205-70, Advertisements, Publicizing Awards, and Releases, in all solicitations and contracts that exceed the simplified acquisition threshold.

(b) Except for research contracts with educational institutions, if the contract involves sensitive or classified information, use the clause with its Alternate I. For research contracts with educational institutions, see (HSAR) 48 CFR 3035.70-2(b).

PART 3006—COMPETITION REQUIREMENTS

■ 21. Amend subpart 3006.3 by adding sections 3006.302-1, 3006.302-70, 3006.303, 3006.303-270, 3006.304, and 3006.304-70 to read as follows:

Subpart 3006.3—Other Than Full and Open Competition

* * * * *

3006.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

3006.302-270 Unusual and compelling urgency.

* * * * *

3006.303 Justifications.

3006.303-270 Content.

3006.304 Approval of justification.

3006.304-70 DHS Approval of justification.

3006.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(b)(4) The contracting officer may rely on this exception in the case where only

one source is available to provide additional units or replacement items under a specific make and model requirement, but only where the CPO has determined in accordance with the agency's standardization program that only the specific make(s) and model(s) will satisfy the agency's needs.

3006.302-270 Unusual and compelling urgency.

(d)(1)(iii) For contract awards to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, that relies on this exception, the period of performance shall be limited to the minimum period necessary to meet the urgent and compelling requirements of the work to be performed and to enter into another contract for the required goods or services through the use of competitive procedures, but in no event shall the period of performance exceed 150 days, unless the Head of the Contracting Activity (or higher approval authority if required by (FAR) 48 CFR 6.304 or DHS procedures) determines that exceptional circumstances apply, approving the justification as set forth in (HSAR) 48 CFR 3006.304. The limitation on the period of performance applies to contracts awarded in response to, or to recovery from:

(A) A major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121-5207) (see <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations);

(B) An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, and for which the Federal Emergency Management Agency has approved a fire management assistance declaration in accordance with regulatory criteria at 44 CFR 204.21 (see <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations); or

(C) An incident for which the National Operations Center (NOC), through the National Response Coordination Center (NRCC), coordinates the activation of the appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator (FRC) to manage Federal resource support.

* * * * *

3006.303 Justifications.

3006.303-270 Content.

(a)(9)(iv) For a proposed contract subject to the restrictions of (HSAR) 48

CFR 3006.302–270(d)(1)(iii) and where (FAR) 48 CFR 6.302–2 is cited as the authority, the exceptional circumstances allowing for an award for a period of performance in excess of 150 days.

3006.304 Approval of justification.

3006.304–70 DHS Approval of justification.

A justification for other than full and open competition that cites (FAR) 48 CFR section 6.302–2 as its authority shall be approved in writing by the HCA (unless a higher approval authority is required in accordance with (FAR) 48 CFR section 6.304 or DHS procedures) for a proposed DHS contract to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster with a period of performance in excess of 150 days. The justification should make plain the exceptional circumstances that justify the duration of the contract. This authority may not be redelegated by the HCA.

- 22. Add part 3012 to read:

PART 3012—ACQUISITION OF COMMERCIAL ITEMS

Subpart 3012.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.

3012.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

Authority: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

3012.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) Solicitation provisions and contract clauses. Insert (HSAR) 48 CFR 3052.212–70, Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items, in any solicitation or contract for commercial items when any of the provisions or clauses listed therein applies and where incorporation by reference of each selected provision or clause is, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

- 23. Add part 3018 to read:

PART 3018—EMERGENCY ACQUISITIONS

Subpart 3018.1—Available Acquisition Flexibilities

Sec.

3018.109 Priorities and allocations.

Authority: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

3018.109 Priorities and allocations.

DHS Components may assign priority ratings on contracts and orders as authorized by the Defense Priorities and Allocation System (DPAS). (See (HSAR) 48 CFR 3011.602.)

PART 3022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

- 24. Amend section 3022.406–9(c)(1) by removing “DHS Form 0700–04” and adding in its place “DHS Form 700–4”.

PART 3023—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

- 25. Amend Part 3023 by revising the heading to read as set forth above.

* * * * *

3023.1002 [Removed]

- 26a. Amend subpart 3023.10 by removing section 3023.1002.

- 26b. Add section 3023.1004 to read as follows:

3023.1004 Requirements.

DHS Directive 023–02 Environmental Compliance Program provides guidance and direction for compliance with environmental laws, regulations and executive orders. DHS Directive 025–01, Sustainable Practices for Environmental, Energy and Transportation, provides guidance and direction for compliance with green purchasing and other sustainable practices contained in Executive Order 13423. Contracting officers shall ensure that solicitations and contracts contain appropriate sustainable practices requirements, provisions and clauses. Contractors shall support the DHS Environmental Policy by taking appropriate actions to eliminate or reduce their impacts on the environment.

PART 3033—PROTESTS, DISPUTES, AND APPEALS

- 27. Amend part 3033 by adding subpart 3033.1 to read as follows:

Subpart 3033.1—Protests

Sec.

3033.102 General.

3033.102–90 Protests on classified solicitations (OSA).

3033.102–90 Protests on classified solicitations (OSA).

To ensure that classified information is protected and appropriate security measures are coordinated as required, protests involving classified solicitations issued by the Office of Selective Acquisitions (OSA) shall be submitted directly to the contracting officer for further transmission to the GAO, the United States Court of Federal Claims, or for internal resolution in the case of agency protests. Specific instructions will be provided in Section L of the solicitation.

PART 3035—RESEARCH AND DEVELOPMENT CONTRACTING

3035.7000 [Removed]

- 28a. Amend subpart 3035.70 by removing section 3035.7000.

- 28b. Add sections 3035.70–1 and 3035.70–2 to read as follows:

3035.70–1 Policy.

The Department of Homeland Security (DHS) desires widespread dissemination of the results of funded non-sensitive research. The Contractor, therefore, may publish (subject to the provisions of the “Data Rights” and “Patent Rights” clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media.

3035.70–2 Contract clause.

(a) The contracting officer shall use the clause at (HSAR) 48 CFR 3052.235–70, Dissemination of Information—Educational Institutions, in contracts with educational institutions for research that is not sensitive or classified.

(b) If the contract involves sensitive or classified research, the contracting officer shall prepare and insert a Special Contract Requirement that conditions dissemination upon the approval of a designated Government official.

PART 3036—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

3036.201 [Removed]

- 29. Remove section 3036.201.

PART 3042—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 3042.2 [Removed]

- 30. Remove subpart 3042.2.

- 31. Revise section 3042.1502 to read as follows:

3042.1502 Policy.

(a) Components shall use the Contractor Performance Assessment Reporting System (CPARS) or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

(e) Components shall use the Construction Contractor Appraisal Support System (CCASS) module of CPARS, or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating construction contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

(f) Components shall use the Architect-Engineer Contract Administration Support System (ACASS) module of CPARS or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating architect-engineer contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

PART 3045—[REMOVED AND RESERVED]

■ 32. Under the authority of 5 U.S.C. 301–302, part 3045 is removed and reserved.

PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 33. Amend section 3052.101 by adding the following note:

Subpart 3052.1—Instructions for Using Provisions and Clauses

Sec.
3052.101 Using Part 3052.
3052.101 Using Part 3052.

Note to 3052.101: The solicitation provisions and contract clauses matrix referencing all HSAR provisions and clauses is available at <http://www.dhs.gov/xopnbiz/> under Policy and Regulations, Homeland Security Acquisition Regulation (HSAR).

■ 34. Amend subpart 3052.2 by adding 3052.203–70 to read:

3052.203–70 Instructions for Contractor Disclosure of Violations.

As prescribed in (HSAR) 48 CFR 3003.1004(a), insert the following clause:

Instructions for Contractor Disclosure of Violations ((DATE))

When making a written disclosure under the clause at FAR 52.203–13,

paragraph (b)(3), the Contractor shall use the Contractor Disclosure Form at <http://www.oig.dhs.gov> and submit the disclosure electronically to the Department of Homeland Security Office of Inspector General. The Contractor shall provide a copy of the disclosure to the Contracting Officer by email or facsimile on the same business day as the submission to the Office of Inspector General. The Contractor shall provide the Contracting Officer a concurrent copy of any supporting materials submitted to the Office of Inspector General.

- 35–36. Amend section 3052.204–71:
 - a. By capitalizing the first letter of every occurrence of the words “contractor” and “government” and by revising paragraph (a) of the clause; and
 - b. In Alternate I by capitalizing the first letters of every occurrence of the words “contractor” and “contracting officer” in the alternate content, by removing paragraph (k)(1) of the alternate and renumbering paragraphs (k)(2) and (3) to (k)(1) and (2) respectively, and by revising the date of Alternate I.

The revisions read as follows:

3052.204–71 Contractor employee access ((DATE))

(a) *Sensitive Information*, as used in this clause, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

* * * * *

“Alternate I ((DATE))”

* * * * *

■ 37. Amend subpart 3052.2 by adding 3052.205–70 to read as follows:

3052.205–70 Advertisements, Publicizing Awards, and Releases.

As prescribed in (HSAR) 48 CFR 3005.470–2, insert the following clause:

Advertisements, Publicizing Awards, and Releases ((DATE))

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or

imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

(End of clause)

Alternate I ((DATE)). If a contract involves sensitive or classified information, designate the paragraph in the base clause as (a) and add the following paragraph (b) to the clause:

(b) All advertisements, releases, announcements, or other publication regarding this contract or the agency programs and projects covered under it, or the results or conclusions made pursuant to performance, must be approved by the Contracting Officer. Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity, release, or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

(End of clause)

■ 38. Amend subpart 3052.2 by adding section 3052.212–70 to read as follows:

3052.212–70 Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items. As prescribed in (HSAR) 48 CFR 3012.301, insert the following clause:

Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items ((DATE))

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference: [The Contracting Officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The Contracting Officer may add the date of the provision or clause if desired for clarity.]

(a) *Provisions.*

- 3052.209–72 Organizational Conflicts of Interest.
- 3052.216–70 Evaluation of Offers Subject to An Economic Price Adjustment Clause.
- 3052.219–72 Evaluation of Prime Contractor Participation in the DHS Mentor Protégé Program.

(b) *Clauses.*

- 3052.203–70 Instructions for Contractor Disclosure of Violations.
- 3052.204–70 Security Requirements for Unclassified Information Technology Resources.
- 3052.204–71 Contractor Employee Access.
- Alternate I
- 3052.205–70 Advertisement, Publicizing Awards, and Releases.

3052.209–73	Limitation on Future Contracting.
3052.215–70	Key Personnel or Facilities.
3052.216–71	Determination of Award Fee.
3052.216–72	Performance Evaluation Plan.
3052.216–73	Distribution of Award Fee.
3052.217–91	Performance. (USCG)
3052.217–92	Inspection and Manner of Doing Work. (USCG)
3052.217–93	Subcontracts. (USCG)
3052.217–94	Lay Days. (USCG)
3052.217–95	Liability and Insurance. (USCG)
3052.217–96	Title. (USCG)
3052.217–97	Discharge of Liens. (USCG)
3052.217–98	Delays. (USCG)
3052.217–99	Department of Labor Safety and Health Regulations for Ship Repair. (USCG)
3052.217–100	Guarantee. (USCG)
3052.219–70	Small Business Subcontracting Plan Reporting.
3052.219–71	DHS Mentor Protégé Program.
3052.228–70	Insurance.
3052.228–90	Notification of Miller Act Payment Bond Protection. (USCG)
3052.228–91	Loss of or Damage to Leased Aircraft. (USCG)
3052.228–92	Fair Market Value of Aircraft. (USCG)
3052.228–93	Risk and Indemnities. (USCG)
3052.236–70	Special Provisions for Work at Operating Airports.
3052.242–72	Contracting Officer's Technical Representative.
3052.247–70	F.o.B. Origin Information. Alternate I
	Alternate II
3052.247–71	F.o.B. Origin Only.
3052.247–72	F.o.B. Destination Only.

(End of clause)

3052.216–71 [Amended]

■ 39. Amend section 3052.216–71, Determination of Award Fee by removing the words “(DEC 2003)” from the title of the clause, adding in their place the words “([DATE])” and by removing paragraph (d).

3052.235–70 [Amended]

■ 40. Amend section 3052.235–70 by removing the words “48 CFR 3035.7000” in the introductory paragraph and adding in their place the reference to “48 CFR 3035.70–2.”

3052.242–71 [Removed]

■ 41. Remove section 3052.242–71.

3052.245–70 [Removed]

■ 42. Remove section 3052.245–70.

PART 3053—FORMS

■ 43. Amend section 3053.204–70 by revising paragraphs (a) through (c) to read as follows:

3053.204–70 Administrative matters.

* * * * *

(a) DHS Form 700–1, Cumulative Claim and Reconciliation Statement. (See (HSAR) 48 CFR 3004.804–570(a)(3).)

(b) DHS Form 700–2, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts. (See (HSAR) 48 CFR 3004.804–570(a)(2).)

(c) DHS Form 700–3, Contractor Release. (See (HSAR) 48 CFR 3004.804–570(a)(1).)

3053.222–70 [Amended]

■ 44. Amend section 3053.222–70 by removing “DHS Form 0700–04” in the last line and adding “DHS Form 700–4” in its place.

3053.303 [Amended]

■ 45. Amend section 3053.303 by removing “DHS Form 0700–01”, “DHS Form 0700–02”, “DHS Form 0700–03”, and “DHS Form 0700–04” from the table in the “Form No.” column, and adding in their place, respectively “DHS Form 700–1”, “DHS Form 700–2”, “DHS Form 700–3”, and “DHS Form 700–4”; and by removing the whole entry for “Contractor Report of Government Property/DHS Form 0700–05.”

3053.245–70 [Removed and Reserved]

■ 46. Remove and reserve section 3053.245–70.

[FR Doc. 2012–20440 Filed 8–21–12; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA–2012–0080; Notice 2]

RIN 2127–AL09

Schedule of Fees Authorized

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

ACTION: Final rule.

SUMMARY: This document adopts fees for Fiscal Year 2013 and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to

the Federal motor vehicle safety standards (FMVSS). These fees are needed to maintain the registered importer (RI) program.

We are increasing the fees for the registration of a new RI from \$795 to \$805 and the annual fee for renewing an existing registration from \$670 to \$676. The fee to reimburse Customs for conformance bond processing costs will decrease from \$9.93 to \$9.09 per bond. The fee for the review, processing, handling, and disbursement of cash deposits that are submitted in lieu of a conformance bond will decrease from \$514 to \$495. We are decreasing the fees for the importation of a vehicle covered by an import eligibility decision made on an individual model and model year basis. For vehicles determined eligible based on their substantial similarity to a U.S. certified vehicle, the fee will decrease from \$158 to \$101. For vehicles determined eligible based on their capability of being modified to comply with all applicable FMVSS, the fee will also decrease from \$158 to \$101. The fee for the inspection of a vehicle will remain \$827. The fee for processing a conformity package will decrease from \$17 to \$12. If the vehicle has been entered electronically with Customs through the Automated Broker Interface (ABI) and the RI has an email address, the fee for processing the conformity package will continue to be \$6, provided the fee is paid by credit card. If NHTSA finds that the information in the entry or the conformity package is incorrect, the processing fee will remain \$57, representing the fee that is currently charged when there are one or more errors in the ABI entry or omissions in the statement of conformity.

DATES: The amendments established by this final rule will become effective on October 1, 2012. Petitions for reconsideration must be received by NHTSA not later than October 9, 2012.

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

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

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, NHTSA (202–366–5291). For legal issues, you may call Nicholas Englund, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION:

Introduction

This rule was preceded by a notice of proposed rulemaking (NPRM) that NHTSA published on June 13, 2012 (77 FR 35338).

The National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, and recodified at 49 U.S.C. 30141–30147 (“the Act”), provides for fees to cover the costs of the importer registration program, the cost of making import eligibility decisions, and the cost of processing the bonds furnished to Customs. Certain fees became effective on January 31, 1990, and have been in effect, with modifications, since then. On June 24, 1996, we published a notice in the **Federal Register** at 61 FR 32411 that discussed the rulemaking history of 49 CFR Part 594 and the fees authorized by the Act. The reader is referred to that notice for background information relating to this rulemaking action.

We are required to review and make appropriate adjustments at least every two years in the fees established for the administration of the RI program. See 49 U.S.C. 30141(e). The fees applicable in any fiscal year (FY) are to be established before the beginning of such year. *Id.* We last amended the fee schedule in 2010. See final rule published on August 11, 2010 at 75 FR 48608. Those fees apply to Fiscal Years 2011 and 2012.

The fees adopted in this final rule are based on time expenditures and costs

associated with the tasks for which the fees are assessed. The fees adopted in this notice reflect the freeze in General Schedule salary rates since January 2010 and the slight increases in indirect costs attributed to the agency’s overhead costs since the fees were last adjusted.

Comments

There were no comments in response to the notice of proposed rulemaking.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49, U.S. Code provides that RIs must pay the annual fees established “to pay for the costs of carrying out the registration program for importers * * *.” This fee is payable both by new applicants and by existing RIs. To maintain its registration, each RI, at the time it submits its annual fee, must also file a statement affirming that the information it furnished in its registration application (or in later submissions amending that information) remains correct. 49 CFR 592.5(f).

To comply with the statutory directive, we reviewed the existing fees and their bases in an attempt to establish fees that would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We will increase this fee from \$320 to \$330 for new applications. We have also determined that the fee for the review of the annual statement submitted by existing RIs who wish to renew their registrations will be increased from \$195 to \$201. These fee adjustments reflect our time expenditures in reviewing both new applications and annual statements with accompanying documentation, and the small increases in indirect costs attributed to the agency’s overhead costs in the two years since the fees were last adjusted.

We must also recover costs attributable to maintenance of the registration program that arise from the need for us to review a registrant’s annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to the possible revocation or suspension of registrations and reflect the amount of time that we have devoted to those matters in the past two years.

Based upon our review of these costs, the portion of the fee attributable to the maintenance of the registration program is approximately \$475 for each RI. When this \$475 is added to the \$330 representing the registration application component, the cost to an applicant for RI status comes to \$805, which is the fee we are adopting. This represents an increase of \$10 over the existing fee. When the \$475 is added to the \$201 representing the annual statement component, the total cost to an RI for renewing its registration comes to \$676, which represents an increase of \$6.

Section 594.6(h) enumerates indirect costs associated with processing the annual renewal of RI registrations. The provision states that these costs represent a *pro rata* allocation of the average salary and benefits of employees who process the annual statements and perform related functions, and “a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor.” For the purpose of establishing the fees that are currently in existence, indirect costs are \$20.67 per man-hour. We are increasing this figure by \$0.99, to \$21.66. This increase is based on the difference between enacted budgetary costs within the Department of Transportation for the last two fiscal years, which were higher than the estimates used when the fee schedule was last amended, and takes into account other projected increases over the next two fiscal years.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Decisions

Section 30141(a)(3)(B) also requires registered importers to pay other fees the Secretary of Transportation establishes to cover the costs of “making the decisions under this subchapter.” This includes decisions on whether the vehicle sought to be imported is substantially similar to a motor vehicle that was originally manufactured for importation into and sale in the United States and certified by its original manufacturer as complying with all applicable FMVSS, and whether the vehicle is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S.-certified motor vehicle, the decision is whether the safety features of the vehicle comply with, or are capable of being altered to comply with, the FMVSS based on destructive test information or such other evidence that NHTSA deems to be adequate. These decisions are made in response to petitions submitted by RIs or manufacturers, or on the Administrator’s own initiative.

The fee for a vehicle imported under an eligibility decision made in response to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated *pro rata* share of the costs in making all the eligibility decisions in a fiscal year. The agency's direct and indirect costs must be taken into account in the computation of these costs.

Since we last amended the fee schedule, the overall number of vehicle imports by RIs has increased, while the number of petitions has remained approximately the same. The total number of vehicles that RIs imported each year from 2009 to 2011 more than doubled from approximately 10,000 to 23,000, respectively. Over the same period, the number of vehicles imported under an import eligibility petition that was submitted by an RI (as opposed to an import eligibility decision initiated by the agency) increased from 485 in 2009 to 514 in 2010. That number subsequently decreased to 404 in 2011. Because the number of petitions has remained level over the past two years—averaging 12 per year—the agency has devoted approximately the same amount of staff time reviewing and processing import eligibility petitions.

Based on these trends, the *pro rata* share of petition costs assessed against the importer of each vehicle covered by the eligibility decision will decrease. We project that for FY 2013 and 2014, the agency's annual costs for processing these 12 petitions will be \$45,591. The petitioners will pay \$4,600 of that amount in the processing fees that accompany the filing of their petitions, leaving the remaining \$40,991 to be recovered from the importers of the approximately 404 vehicles projected to be imported under petition-based import eligibility decisions. Dividing \$40,991 by 404 yields a *pro rata* fee of \$101 for each vehicle imported under an eligibility decision that results from the granting of a petition. We are therefore decreasing the *pro rata* share of petition costs that are to be assessed against the importer of each vehicle from \$158 to \$101, which represents a decrease of \$57. The same \$101 fee would be paid regardless of whether the vehicle was petitioned under 49 CFR 593.6(a), based on the substantial similarity of the vehicle to a U.S.-certified model, or was petitioned under 49 CFR 593.6(b), based on the safety features of the vehicle complying with, or being capable of being modified to comply with, all applicable FMVSS.

We are not increasing the current fee of \$175 that covers the initial processing of a "substantially similar" petition.

Likewise, we are also maintaining the existing fee of \$800 to cover the initial costs for processing petitions for vehicles that have no substantially similar U.S.-certified counterpart. In the event that a petitioner requests an inspection of a vehicle, the fee for such an inspection will remain \$827 for vehicles that are the subject of either type of petition.

The importation fee varies depending upon the basis on which the vehicle is determined to be eligible. For vehicles covered by an eligibility decision on the agency's own initiative (other than vehicles imported from Canada that are covered by import eligibility numbers VSA-80 through 83, for which no eligibility decision fee is assessed), the fee remains \$125. NHTSA determined that the costs associated with previous eligibility determinations on the agency's own initiative would be fully recovered by October 1, 2012. We will apply the fee of \$125 per vehicle only to vehicles covered by determinations made by the agency on its own initiative on or after October 1, 2012.

Section 594.9—Fee for Reimbursement of Bond Processing Costs and Costs for Processing Offers of Cash Deposits or Obligations of the United States in Lieu of Sureties on Bonds

Section 30141(a)(3) also requires a registered importer to pay any other fees the Secretary of Transportation establishes "to pay for the costs of—(A) processing bonds provided to the Secretary of the Treasury * * *" upon the importation of a nonconforming vehicle to ensure that the vehicle would be brought into compliance within a reasonable time, or if it is not brought into compliance within such time, that it be exported, without cost to the United States, or abandoned to the United States.

The Department of Homeland Security (Customs) exercises the functions associated with the processing of these bonds. To carry out the statute, we make a reasonable determination of the costs that Department incurs in processing the bonds. In essence, the cost to Customs is based upon an estimate of the time that a GS-9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

When the fee schedule was last amended, we projected General Schedule salary raises to be effective in January 2011 and 2012. Based on our projections over the next two fiscal years, we are decreasing the processing fee by \$0.84, from \$9.93 per bond to \$9.09. This decrease reflects the fact that GS-9 salaries have been frozen since we

last amended the fee schedule in 2010. The \$9.09 fee will more closely reflect the direct and indirect costs that are actually associated with processing the bonds.

In lieu of sureties on a DOT conformance bond, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills (collectively referred to as "cash deposits") in an amount equal to the amount of the bond. 49 CFR 591.10(a). The receipt, processing, handling, and disbursement of the cash deposits that have been tendered by RIs cause the agency to consume a considerable amount of staff time and material resources. NHTSA has concluded that the expense incurred by the agency to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A). We first established a fee of \$459 for each vehicle imported on and after October 1, 2008, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond. See the Final Rule published on July 11, 2008 at 73 FR 39890.

The agency considered its direct and indirect costs in calculating the fee for the review, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on a DOT conformance bond. We are decreasing the fee from \$514 to \$495. The factors that the agency has taken into account in proposing the fee include time expended by agency personnel, the slight increase in overhead costs, and the reduction in projected salary costs based on the General Schedule salary freeze since January 2010.

Section 594.10—Fee for Review and Processing of Conformity Certificate

Each RI is currently required to pay \$17 per vehicle to cover the costs the agency incurs in reviewing a certificate of conformity. We have found that these costs have decreased from \$17 to an average of \$12 per vehicle. Although our overhead costs increased, the salary and benefit costs are less than our previous projections based on the General Schedule salary freeze. The number of certificates of conformity submitted for agency review has increased. This has decreased the agency's cost attributed to the review of each certificate of conformity. Based on these costs, we are decreasing the fee charged for vehicles for which a paper entry and fee payment is made, from \$17 to \$12, a difference

of \$5 per vehicle. However, if an RI enters a vehicle through the Automated Broker Interface (ABI) system, has an email address to receive communications from NHTSA, and pays the fee by credit card, the cost savings that we realize allow us to significantly reduce the fee to \$6. We are maintaining the fee of \$6 per vehicle if all the information in the ABI entry is correct.

Errors in ABI entries not only eliminate any time savings, but also require additional staff time to be expended in reconciling the erroneous ABI entry information to the conformity data that is ultimately submitted. Our experience with these errors has shown that staff members must examine records, make time-consuming long distance telephone calls, and often consult supervisory personnel to resolve the conflicts in the data. We have calculated this staff and supervisory time, as well as the telephone charges, to amount to approximately \$57 for each erroneous ABI entry. Adding this to the \$6 fee for the review of conformity packages on automated entries yields a total of \$63, representing no increase in the fee that is currently charged when there are one or more errors in the ABI entry or in the statement of conformity.

Statutory Basis for the Final Rule and Effective Date

NHTSA is required under 49 U.S.C. 30141(e) to “review and make appropriate adjustments at least every 2 years in the amounts of the fees” relating to the registration of importers, the processing of bonds, and making decisions concerning the importation of nonconforming vehicles. The statute further requires the agency to “establish the fees for each fiscal year before the beginning of that year.” This final rule implements the statutory provisions. In the NPRM, we proposed to make this rule effective October 1, 2012, and did not receive any comments on this issue. Accordingly, the effective date of this final rule is October 1, 2012.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation’s regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking document under Executive Order 12886. Further, NHTSA has determined that the rulemaking is not significant under Department of Transportation’s regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule would be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. The rule will have no substantial effect upon State and local governments. There will be no substantial impacts upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the registered importer program, adopted on September 29, 1989, was prepared, and is available for review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration’s regulations at 13 CFR Part 121 define a small business, in part, as a business entity “which operates primarily within

the United States.” (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

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

The following is NHTSA’s statement providing the factual basis for the certification (5 U.S.C. 605(b)). The adopted amendments will primarily affect entities that currently modify nonconforming vehicles and that are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that these companies would be unable to pay the fees proposed by this action. In most instances, these fees would not be changed or be only modestly increased (and in some instances decreased) from the fees now being paid by these entities. Moreover, consistent with prevailing industry practices, these fees should be passed through to the ultimate purchasers of the vehicles that are altered and, in most instances, sold by the affected registered importers. The cost to owners or purchasers of nonconforming vehicles that are altered to conform to the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

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

C. Executive Order 13132 (Federalism)

NHTSA has examined today’s final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant either consultation with State and local officials or preparation of a federalism summary impact statement. The rule

does 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 the responsibilities among the various levels of government.”

Further, no consultation is needed to discuss the issue of preemption in connection with today’s final rule. The issue of preemption can arise in connection with NHTSA rules in two ways.

First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: “When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.” 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today’s rulemaking, so consultation is unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption: In some instances, State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of some of the NHTSA safety standards. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

NHTSA has considered the nature (e.g., the language and structure of the regulatory text) and purpose of today’s final rule and does not foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption of state law, including state tort law.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 “Civil Justice Reform,” the agency has considered whether the amendments

adopted in this final rule will have any retroactive effect. NHTSA concludes that those amendments will not have any retroactive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

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

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Part 594 includes collections of information for which NHTSA has obtained OMB Clearance No. 2127–0002, a consolidated collection of information for “Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards,” approved through January 31, 2014. This final rule will not affect the burden hours associated with Clearance No. 2127–0002 because we are only adjusting the fees associated with participating in the registered importer program. The new fees that we are adopting will not impose new collection of information

requirements or otherwise affect the scope of the program.

H. Executive Order 13045

Executive Order 13045, “Protection of Children from Environmental Health and Safety Risks” (62 FR 19855, April 23, 1997), applies to any rule that (1) is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant and does not concern an environmental, health, or safety risk.

I. National Technology Transfer and Advancement Act

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

In this final rule, we are adjusting the fees associated with the registered importer program. We are making no substantive changes to the program nor did we adopt any technical standards. For these reasons, Section 12(d) of the NTTAA does not apply.

J. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://www.regulations.gov>.

K. Regulation Identifier Number (RIN)

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

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 594 is amended as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

■ 1. The authority citation for part 594 continues to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

■ 2. Amend § 594.6 by:

- a. Revising the introductory text of paragraph (a);
- b. Revising paragraph (b);
- c. Revising paragraph (d) the first sentence;
- d. Revising the second sentence of paragraph (h); and
- e. Revising paragraph (i) to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2012, must pay an annual fee of \$805, as calculated below, based upon the direct and indirect costs attributable to:

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2012, is \$330. The sum of \$330, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program on and after October 1, 2012, is set forth in paragraph (i) of this section. * * *

* * * * *

(h) * * * This cost is \$21.66 per man-hour for the period beginning October 1, 2012.

(i) Based upon the elements and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the

initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 2012, is \$475. When added to the costs of registration of \$330, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are \$805. The annual renewal registration fee for the period beginning October 1, 2012, is \$676.

■ 3. Amend § 594.7 by revising the first sentence of paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2012, the fee payable for seeking a determination under paragraph (a)(1) of this section is \$175.

* * * * *

■ 4. Amend § 594.8 by revising the first sentence of paragraph (b) and the first sentence of paragraph (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is \$101. * * *

(c) If a determination has been made on or after October 1, 2012, pursuant to the Administrator's initiative, the fee for each vehicle is \$125. * * *

■ 5. Amend § 594.9 by revising paragraphs (c) and (e) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs and costs for processing offers of cash deposits or obligations of the United States in lieu of sureties on bonds.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2012, for which a certificate of conformity is furnished, is \$9.09.

* * * * *

(e) The fee for each vehicle imported on and after October 1, 2012, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond, is \$495.

6. Amend § 594.10 by revising the first sentence of paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2012 is \$12.

* * *

Issued on: August 16, 2012.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2012-20622 Filed 8-21-12; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 110908576-2240-02]

RIN 0648-BB44

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 11; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule to implement Amendment 11 to the Fishery Management Plan for the Spiny Lobster Fishery in the Gulf of Mexico and South Atlantic Regions that published on Friday, July 27, 2012.

DATES: This correction is effective August 27, 2012.

FOR FURTHER INFORMATION CONTACT: Scott Sandorf, 727-824-5305; email: scott.sandorf@noaa.gov.

SUPPLEMENTARY INFORMATION:

Correction

On July 27, 2012 (77 FR 44168, July 27, 2012), incorrect latitudinal coordinates for Lobster Trap Gear Closed Areas 16 and 17, and longitudinal coordinates for Lobster Trap Gear Closed Area 18 were published. In rule document 2012-18303 appearing on pages 44168-44172 in the issue of Friday July 27, 2012, make the following corrections:

PART 640—[CORRECTED]

■ 1. On page 44170, in the first column, under § 640.22, in paragraphs (b)(4)(xvi) and (b)(4)(xvii), Point D is corrected; and in paragraph (b)(4)(xviii), Points B and C are corrected to read as follows:

§ 640.22 Gear and diving restriction.

* * * * *

(b) * * *

(4) * * *

(xvi) * * *

Point	North lat.	West long.
* * *		
D	24°53'24.562"	80°33'14.886"
* * *		
(xvii) * * *		
Point	North lat.	West long.
* * *		
D	24°53'25.348"	80°32'43.302"
* * *		

Point	North lat.	West long.
* * *		
(xviii) * * *		
Point	North lat.	West long.
* * *		
B	24°53'59.368"	80°32'41.542"
C	24°54'06.667"	80°32'48.994"
* * *		

* * * * *

Dated: August 17, 2012.

Alan D. Risenhoover,
 Director, Office of Sustainable Fisheries,
 performing the functions and duties of the
 Deputy Assistant Administrator for
 Regulatory Programs, National Marine
 Fisheries Service.

[FR Doc. 2012-20674 Filed 8-21-12; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 77, No. 163

Wednesday, August 22, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-0880; Directorate Identifier 2012-CE-004-AD]

RIN 2120-AA64

Airworthiness Directives; Cessna Airplane Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Cessna Airplane Company Model 525 airplanes equipped with certain part number (P/N) air conditioning (A/C) compressor motors. This proposed AD was prompted by reports of smoke and/or fire in the tailcone caused by brushes wearing beyond their limits on the A/C motor. This proposed AD would require inspection of the number of hours on the A/C compressor hour meter, inspection of the logbook, and replacement of the brushes on certain P/N A/C compressor motors or deactivation of the A/C system until replacement of the brushes. This proposed AD also requires reporting of aircraft information related to the replacement of the brushes. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 9, 2012.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Christine Abraham, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946-4165; fax: (316) 946-4107; email: WICHITA-COS@FAA.GOV.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2012-0880; Directorate Identifier 2012-CE-004-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received more than 10 reports of smoke/fire (3 reports of fire) in the tailcone on Cessna Aircraft Company (Cessna) 525, 550, and 560 airplanes, where investigation revealed brushes had worn beyond their limits on the

part number (P/N) 1134104-1 A/C compressor motors. When the brush wears down, the rivet in the brush contacts the commutator, causing sparks (potential ignition source) and excessive heat build-up within the motor assembly. The A/C motor is located in the tailcone where flammable fluids are present (fuel lines and some hydraulics) on the Cessna airplanes. There is no fire detection or fire extinguishing equipment in the tailcone.

This condition, if not corrected, could result in a fire in the tailcone with no means to detect or extinguish it.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require repetitive inspection of the compressor hour meter on Cessna Model 525 airplanes that have P/N 1134104-1 or 1134104-5 A/C compressor motor installed; an aircraft logbook check for an entry for replacing the brushes, compressor motor, or compressor condenser module assembly (pallet); and replacement of the brushes on the A/C motor or deactivation of the A/C system with installation of a placard prohibiting use of the A/C system until replacement of the brushes. This proposed AD would also require, when the brushes are replaced, reporting of aircraft information related to the replacement of the brushes. The FAA is analyzing this unsafe condition on airplanes certificated under 14 CFR part 25 and may take AD action on those airplanes.

The reporting data required by this proposed AD will enable us to obtain better insight into brush wear. The reporting data will also indicate if the replacement intervals we established are adequate. After we analyze the reporting data received, we may take future rulemaking action.

Costs of Compliance

We estimate that this proposed AD affects 408 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect and replace brushes on the A/C motor.	11 work-hours × \$85 per hour = \$935	\$252	\$1,187	\$484,296
Return shipment of brushes to the manufacturer.	\$15 per return with two required returns	Not applicable ...	30	12,240

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. FAA-2012-0880; Directorate Identifier 2012-CE-004-AD.

(a) Comments Due Date

We must receive comments by October 9, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Cessna Aircraft Company Model 525 airplanes, serial number (S/N) 525-0001 through 525-0558, and 525-0600 through 525-0701, that

- (1) are equipped with part number (P/N) 1134104-1 or 1134104-5 air conditioning (A/C) compressor motor; and
- (2) are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 21, Air Conditioning.

(e) Unsafe Condition

This AD was prompted by reports of smoke and/or fire in the tailcone caused by brushes wearing beyond their limits on the A/C motor. We are issuing this AD to require replacement of the brushes on certain P/N A/C compressor motors or deactivation of the A/C system until replacement of the brushes. This AD also requires reporting of aircraft information related to the replacement of the brushes.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspections

Within the next 30 days after the effective date of this AD or within the next 10 hours

time-in-service (TIS) after the effective date of this AD, whichever occurs first, do the following:

- (1) Inspect the number of hours on the A/C compressor hour meter; and
- (2) Check the aircraft logbook for any entry for replacing the A/C compressor motor brushes with new brushes or replacing the compressor motor or compressor condenser module assembly (pallet) with a motor or assembly that has new brushes.

(i) If the logbook contains an entry for replacement of parts as specified in the paragraph above, determine the number of hours on the A/C compressor motor brushes by comparing the number of hours on the compressor motor since replacement and use this number in paragraph (h) of this AD; or

(ii) If through the logbook check you cannot positively determine the number of hours on the A/C compressor motor brushes as specified in the paragraph above, you must use the number of hours on the A/C compressor hour meter to comply with the requirements of this AD or presume the brushes have over 500 hours TIS and use this number in paragraph (h) of this AD.

(h) Replacement

At the later of the times specified in paragraph (h)(1) and (h)(2) of this AD, using the hour reading on the A/C compressor hour meter determined in paragraph (g) of this AD, replace the A/C compressor motor brushes with new brushes. Thereafter, repeat the replacement of the A/C compressor motor brushes no later than every 500 hours TIS on the A/C compressor motor. Do the replacement following Cessna Aircraft Company Model 525 Maintenance Manual, Revision 23, dated July 1, 2012.

(1) Before or when the A/C compressor motor brushes reach a total of 500 hours TIS; or

(2) Before further flight after the inspection required in paragraph (g) of this AD.

(i) Deactivation

(1) In lieu of replacing the A/C compressor motor brushes, before or when the A/C compressor motor brushes reach a total of 500 hours TIS, you may deactivate the A/C. Pull the vapor cycle A/C circuit breaker, install a placard by the A/C selection switch prohibiting use of the vapor cycle air conditioner, and document deactivation of the system in the aircraft logbook referring to this AD as the reason for deactivation. While the system is deactivated, aircraft operators must remain aware of operating temperature limitations as detailed in the specific airplane flight manual.

(2) If you choose to deactivate the system and then later choose to return the A/C to service: Before returning the A/C system to

service and removing the placard, you must apply the inspection and replacement requirements of the brushes as specified in paragraph (g) and (h) of this AD.

(j) Return of Replaced Parts and Reporting Requirement

For the first two A/C compressor motor brush replacement cycles on each aircraft, within 30 days after the replacement or within 30 days after the effective date of this AD, whichever occurs later, send the brushes that were removed to Cessna Aircraft Company, Cessna Service Parts and Programs, 7121 Southwest Boulevard, Wichita, KS 67215. Provide the following information with the brushes:

- (1) The Model and S/N of the airplane;
- (2) P/N of Motor;
- (3) P/N of the brushes, if known;
- (4) The elapsed amount of motor hours since the last brush/motor replacement, if known;
- (5) If motor hours are unknown, report the elapsed airplane flight hours since the last brush/motor replacement and indicate that motor hours are unknown; and
- (6) Number of motor hours currently displayed on the pallet hour meter.

(k) Special Flight Permit

Special flight permits are permitted with the following limitation: Operation of the A/C system is prohibited.

(l) Paperwork Reduction Act Burden Statement

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

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager

of the local flight standards district office/certificate holding district office.

(n) Related Information

For more information about this AD, contact Christine Abraham, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946-4165; fax: (316) 946-4107; email: WICHITA-COS@FAA.GOV.

Issued in Kansas City, Missouri, on August 16, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012-20694 Filed 8-21-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2012-0433; Airspace Docket No. 12-AAL-5]

Proposed Establishment of Class D Airspace; Bryant AAF, Anchorage, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D airspace at Bryant Army Airfield (AAF), Anchorage AK. Controlled airspace is necessary due to an increase in the complexity, volume and variety of aircraft in the immediate vicinity of Bryant AAF. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before October 9, 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-2012-0433; Airspace Docket No. 12-AAL-5, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4517.

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 2012-0433 and Airspace Docket No. 12-AAL-5) 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-2012-0433 and Airspace Docket No. 12-AAL-5". 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 9:00 a.m. and 5:00 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 NPRM's 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 establishing Class D airspace extending upward from the surface at Bryant AAF, Anchorage AK. Controlled airspace is necessary to accommodate the increased volume and variety of aircraft arriving and departing the immediate vicinity of Bryant AAF. This action would enhance the safety and management of the complexity of aircraft operations at the airport.

Class D airspace designations are published in paragraph 5000, 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 D 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 Bryant AAF, Anchorage AK.

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 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 5000 Class D airspace.

* * * * *

AAL AK D Bryant Army Airfield, Anchorage AK [NEW]

Bryant AAF, AK
(Lat. 61°15'57" N., long. 149°39'12" W.)

That airspace extending upward from the surface to and including 1,600 feet MSL within an area bounded by a line beginning at lat. 61°14'24" N., long. 149°41'23" W.; to lat. 61°14'08" N., long. 149°40'40" W.; to lat. 61°14'56" N., long. 149°38'48" W.; to lat. 61°15'54" N. long. 149°38'17" W.; thence to the point of beginning. That airspace extending upward from the surface to and including 2,900 feet MSL within an area bounded by a line beginning at lat. 61°17'13" N. long. 149°37'35" W.; to lat. 61°17'13" N. long. 149°43'08" W.; to lat. 61°13'49" N., long. 149°43'08" W.; to lat. 61°14'24" N., long. 149°41'23" W.; to lat. 61°15'54" N., long. 149°38'20" W.; thence to the point of beginning.

Issued in Seattle, Washington, on August 14, 2012.

John Warner

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012-20539 Filed 8-21-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2011-1435; Airspace Docket No. 11-ACE-28]

Proposed Amendment of Class E Airspace; Perry, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Perry, IA. Decommissioning of the Perry non-directional beacon (NDB) at Perry Municipal Airport, Perry, IA, has made reconfiguration necessary for standard instrument approach procedures and for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before October 9, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2011-1435/Airspace Docket No. 11-ACE-28, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

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:

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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2011-1435/Airspace Docket No. 11-ACE-28." The postcard will be date/time stamped and returned to the commenter.

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Perry Municipal Airport, Perry, IA. Airspace reconfiguration is necessary due to the decommissioning of the Perry NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas 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 designation

listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 would amend controlled airspace at Perry Municipal Airport, Perry, IA.

Environmental Review

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

In consideration of the foregoing, 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 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 FAA 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.

* * * * *

ACE IA E5 Perry, IA [Amended]

Perry Municipal Airport, IA
(Lat. 41°49'41" N., long. 94°09'35" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Perry Municipal Airport.

Issued in Fort Worth, TX on August 1, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012-20656 Filed 8-21-12; 8:45 am]

BILLING CODE 4901-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2012-0653; Airspace Docket No. 12-ASW-3]

Proposed Amendment of Class E Airspace; Breckenridge, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Breckenridge, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Stephens County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. Geographic coordinates of the airport would also be updated.

DATES: 0901 UTC. Comments must be received on or before October 9, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2012-0653/Airspace Docket No. 12-ASW-3,

at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

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:

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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2012-0653/Airspace Docket No. 12-ASW-3." The postcard will be date/time stamped and returned to the commenter.

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 ADDRESSES section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal

docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Stephens County Airport, Breckenridge, TX. Controlled airspace is needed for the safety and management of IFR operations at the airport. The airport's geographic coordinates also would be updated to coincide with the FAA's aeronautical database.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 would amend controlled airspace at Stephens County Airport, Breckenridge, TX.

Environmental Review

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

In consideration of the foregoing, 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 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 FAA 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.

* * * * *

ASW TX E5 Breckenridge, TX [Amended]

Stephens County Airport, TX
(Lat. 32°43'08" N., long. 98°53'30" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Stephens County Airport, and within 2 miles each side of the 180° bearing from the airport extending from the 6.4-mile radius to 10.4 miles south of the airport.

Issued in Fort Worth, TX on August 1, 2012.

David. P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012-20657 Filed 8-21-12; 8:45 am]

BILLING CODE 4901-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2011-1432; Airspace
Docket No. 11-ACE-25]

**Proposed Amendment of Class E
Airspace; Boone, IA**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to amend Class E airspace at Boone, IA. Decommissioning of the Boone non-directional beacon (NDB) at Boone Municipal Airport has made reconfiguration necessary for standard instrument approach procedures and for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before October 9, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2011-1432/Airspace Docket No. 11-ACE-25, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

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:**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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2011-1432/Airspace Docket No. 11-ACE-25." The postcard will be date/time stamped and returned to the commenter.

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by modifying Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Boone Municipal Airport, Boone, IA. Airspace reconfiguration is necessary due to the decommissioning of the Boone NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas 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 designation

listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 would amend controlled airspace at Boone Municipal Airport, Boone, IA.

Environmental Review

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

In consideration of the foregoing, 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 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 FAA 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.

* * * * *

ACE IA E5 Boone, IA [Amended]

Boone Municipal Airport, IA
(Lat. 42°02'58" N., long. 93°50'51" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Boone Municipal Airport.

Issued in Fort Worth, TX on August 1, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–20658 Filed 8–21–12; 8:45 am]

BILLING CODE 4901–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2012–0620; A–1–FRL–9719–2]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Hot Mix Asphalt Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on January 28, 2005. Specifically, EPA is proposing to approve amendments to the New Hampshire Hot Mix Asphalt Plant Rule at Env-A 2703.02(a). This rule establishes and requires limitations on visible emissions from all hot mix asphalt plants. This revision is consistent with the maintenance of all National Ambient Air Quality Standards (NAAQS) in New Hampshire. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before September 21, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2012–0620 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *Email: arnold.anne@epa.gov.*

3. *Fax: (617) 918–0047.*

4. *Mail: “EPA–R01–OAR–2012–0620”, Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.*

5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, Mail Code OEP05–2, Boston, MA 02109–3912, telephone number (617) 918–1684, fax number (617) 908–0684, email *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State’s SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: August 7, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2012–20498 Filed 8–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0237; FRL– 9718–5]

Approval and Promulgation of Implementation Plans; Tennessee; 110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, and conditionally approve in part, the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), to demonstrate that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 2008 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. TDEC certified that the Tennessee SIP contains provisions that ensure the 2008 8-hour ozone NAAQS are implemented, enforced, and maintained in Tennessee (hereafter referred to as “infrastructure submission”). EPA is proposing to conditionally approve sub-element 110(a)(2)(E)(ii) of Tennessee’s October 19, 2009, submission because the current Tennessee SIP does not include provisions to comply with the requirements of this sub-element. With the exception of sub-element 110(a)(2)(E)(ii), EPA is proposing to determine that Tennessee’s infrastructure submission, provided to EPA on October 19, 2009, addressed all the required infrastructure elements for the 2008 8-hour ozone NAAQS.

DATES: Written comments must be received on or before September 21, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0237, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email*: R4–RDS@epa.gov.
3. *Fax*: (404) 562–9019.
4. *Mail*: “EPA–R04–OAR–2012–0237,” Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier*: Lynora Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0237. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or

viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT:

Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at ward.nacosta@epa.gov.

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- IV. What is EPA’s analysis of how Tennessee addressed the elements of sections 110(a)(1) and (2) “Infrastructure” provisions?
- V. Proposed Action
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I. Background

On March 27, 2008, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour standard to 0.075 parts per million (ppm). See 73 FR 16436. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure

attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2008 8-hour ozone NAAQS to EPA no later than March 2011.

Midwest Environmental Defense and Sierra Club submitted a complaint on November 20, 2011, related to EPA’s failure to issue findings of failure to submit related to the infrastructure requirements for the 2008 8-hour ozone NAAQS. On December 13, 2011, and March 6, 2012, Midwest Environmental Defense and Sierra Club submitted amended complaints for failure to promulgate prevention of significant deterioration (PSD) regulations within two years and failure to approve or disapprove SIP submittals, and to remove claims regarding states that have submitted SIPs for the 2008 8-hour ozone NAAQS, respectively. Tennessee was among the states named in the November 2011 complaint, and the December 2011 and March 2012 amended complaints. Specifically, the plaintiffs claim that EPA has failed to perform its mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Tennessee’s 2008 ozone infrastructure SIP addressing section 110(a)(2)(A)–(H) and (J)–(M) by no later than April 19, 2011.

Tennessee’s infrastructure submission was received by EPA on October 19, 2009, for the 2008 8-hour ozone NAAQS. The submission was determined to be complete on April 19, 2010. On July 3, 2012, Tennessee submitted a letter to EPA withdrawing the portion of its October 19, 2009, SIP revision purported to address the requirements related to section 110(a)(2)(D)(i)(I) interstate transport. Today’s action is proposing to approve in part, and conditionally approve in part, Tennessee’s infrastructure submission for the 2008 8-hour ozone NAAQS for sections 110(a)(2)(A)–(H) and (J)–(M), except for section 110(a)(2)(C) nonattainment area requirements and, section 110(a)(2)(D)(i)(I) interstate transport. This action is not approving any specific rule, but rather proposing that Tennessee’s already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the

obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below.¹

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.²
- 110(a)(2)(D): Interstate transport.³

¹ Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

² This rulemaking only addresses requirements for this element as they relate to attainment areas.

³ Today's proposed rulemaking does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 2008 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Tennessee consistent with the Clean Air Interstate Rule (CAIR) for the 1997 8-hour ozone NAAQS. On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Tennessee's SIP revision, which was submitted to comply with CAIR. See 72 FR 46388 (August 20, 2007). In so doing, Tennessee's

- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁴
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA sections 110(a)(1) and (2) for ozone and fine particulate matter (PM_{2.5}) NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA's statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.⁵ Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to "director's variance" or

CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has promulgated a new rule to address interstate transport. See 76 FR 48208 (August 8, 2011) ("the Transport Rule"). That rule was recently stayed by the D.C. Circuit Court of Appeals. As a result of both the remand of CAIR and stay of the Transport Rule, Tennessee has not yet made a submission to address interstate transport. EPA's action on element 110(a)(2)(D)(i) for the 2008 8-hour ozone NAAQS will be addressed in a separate action.

⁴ This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," but as mentioned above is not relevant to today's proposed rulemaking.

⁵ See Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA-R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

"director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and (ii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 2008 8-hour ozone NAAQS from Tennessee.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, that "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and PM_{2.5} NAAQS should not be construed as explicit or

implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for Tennessee.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final Agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)" and that these SIPs are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as "infrastructure SIPs." This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic

structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as "nonattainment SIP" submissions required to address the nonattainment planning requirements of part D, "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.⁶ Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.⁷

Notwithstanding that section 110(a)(2) provides that "each" SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP

⁶ For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

⁷ For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule," 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase "contribute significantly to nonattainment").

submissions in section 110(a)(1).⁸ This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general "infrastructure SIP" for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter "interstate transport" provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.⁹ This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.¹⁰

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D

⁸ See *Id.*, 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

⁹ EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM_{2.5} NAAQS. See "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

¹⁰ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.*, the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements “as applicable.” In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and PM_{2.5} NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.¹¹ Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the “infrastructure” elements for SIPs, which it further described as the “basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.”¹² As further identification of these basic structural SIP requirements, “attachment A” to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA

emphasized that the description of the basic requirements listed on attachment A was not intended “to constitute an interpretation of” the requirements, and was merely a “brief description of the required elements.”¹³ EPA also stated its belief that, with one exception, these requirements were “relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.”¹⁴ However, for the one exception to that general assumption (*i.e.*, how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM_{2.5} NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state’s submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the state’s implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 PM_{2.5} NAAQS.¹⁵ In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS, but were germane to these SIP submissions for the 2006 PM_{2.5} NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and PM_{2.5} NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director’s discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address

such issues even if they elected to do so. The SSM and director’s discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA’s 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA’s proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for Tennessee.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA’s 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS because of

¹³ *Id.*, at attachment A, page 1.

¹⁴ *Id.*, at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA’s approach to some substantive issues indicates that the statute is not so “self explanatory,” and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

¹⁵ See “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),” from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the “2009 Guidance”).

¹¹ See “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the “2007 Guidance”).

¹² *Id.*, at page 2.

the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.¹⁶ Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹⁷ Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.¹⁸

¹⁶EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision," 76 FR 21639 (April 18, 2011).

¹⁷EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

¹⁸EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

IV. What is EPA's analysis of how Tennessee addressed the elements of sections 110(a)(1) and (2) "infrastructure" provisions?

The Tennessee infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. *110(a)(2)(A): Emission limits and other control measures:* Tennessee's SIP contains several Air Pollution Control Regulations relevant to air quality control regulations. The regulations described below have been federally approved into the Tennessee SIP and include enforceable emission limitations and other control measures. Chapters 1200-3-1, *General Provisions*; 1200-3-3, *Air Quality Standards*; 1200-3-4, *Open Burning*; 1200-3-18, *Volatile Organic Compounds*; and 1200-3-27, *Nitrogen Oxides*, of the Tennessee SIP establish emission limits for ozone and address the required control measures, means, and techniques for compliance with the 2008 8-hour ozone NAAQS. EPA has made the preliminary determination that the provisions contained in these chapters and Tennessee's practices are adequate to protect the 2008 8-hour ozone NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. *110(a)(2)(B) Ambient air quality monitoring/data system:* Tennessee's Air Pollution Control Regulations, Chapter 1200-3-12, *Procedures for*

Ambient Sampling and Analysis, of the Tennessee SIP, along with the Tennessee Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. On July 1, 2011, Tennessee submitted its plan to EPA. On October 24, 2011, EPA approved Tennessee's monitoring network plan. Tennessee's approved monitoring network plan can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2012-0237. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2008 8-hour ozone NAAQS.

3. *110(a)(2)(C) Program for enforcement of control measures including review of proposed new sources.* In this action, EPA is proposing to approve Tennessee's infrastructure SIP for the 2008 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Chapter 1200-3-9, *Construction and Operating Permits*, of Tennessee's SIP pertains to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. There are three revisions to the Tennessee SIP that are necessary to meet the requirements of infrastructure element 110(a)(2)(C). These three revisions are related to the Ozone Implementation NSR Update (November 29, 2005, 70 FR 71612), the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (June 3, 2010, 75 FR 31514), and the NSR PM_{2.5} Rule (May 16, 2008, 73 FR 28321).

The first revision to the Tennessee SIP (Ozone Implementation NSR Update revisions) was submitted by TDEC on May 28, 2009. This revision modifies provisions of the State's SIP at Chapter 1200-3-9, *Construction and Operating Permits*. In addition to meeting the requirements of the Ozone Implementation NSR Update, these revisions are also necessary to address portions of the infrastructure SIP requirements described at element 110(a)(2)(C) and to include nitrogen oxides (NO_x) as a precursor to ozone. EPA approved this revision on February 7, 2012. See 77 FR 6016.

The second revision pertains to revisions to the PSD program

promulgated in the Greenhouse Gas (GHG) Tailoring Rule, submitted to EPA on January 11, 2012. This revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Tennessee's PSD permitting requirements for their GHG emissions, and thereby addresses the thresholds for GHG permitting applicability in Tennessee. EPA approved this revision on February 28, 2012. See 77 FR 11744. In the January 2012 revision, Tennessee also amended its PSD regulations to add automatic rescission provisions. EPA finalized approval of these provisions on March 1, 2012.

The third revision pertains to the adoption of PSD and Nonattainment New Source Review (NNSR) requirements related to the implementation of the NSR PM_{2.5} Rule. On July 29, 2011, TDEC submitted revisions to its PSD/NSR regulations for EPA approval to revise the Tennessee SIP in Chapter 1200-03-09-.01, *Construction Permits*. The rule amendment adopts required federal PSD and NNSR permitting provisions governing the implementation of the NSR program for PM_{2.5} as promulgated in the NSR PM_{2.5} Rule that address the infrastructure requirements (C) and (J). See 73 FR 28321 (May 16, 2008). EPA finalized approval of Tennessee's July 29, 2011, submittal on July 30, 2012. See 77 FR 44481. These SIP revisions¹⁹ address requisite requirements of infrastructure element 110(a)(2)(C), today's action to propose approval of infrastructure SIP element 110(a)(2)(C). EPA also notes that today's action is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that

meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 2008 8-hour ozone NAAQS.

4. *110(a)(2)(D)(i)(II) Interstate Transport*. EPA is proposing to approve Tennessee's infrastructure SIP for the 2008 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(D)(i)(II) to include a program in the SIP that provides for meeting the applicable PSD and visibility requirements of part C of the Act.

PSD Requirements: In this action, EPA is proposing to approve Tennessee's infrastructure SIP for the 2008 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(D)(i)(II) related to PSD to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Chapter 1200-3-9, *Construction and Operating Permits*, of Tennessee's SIP pertains to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. There are three revisions to the Tennessee SIP that are necessary to meet the requirements of infrastructure element 110(a)(2)(C). These three revisions are related to the Ozone Implementation NSR Update, the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule", and the NSR PM_{2.5} Rule. For more detail on these rules, see item 3 above. These three rules demonstrate that Tennessee has a comprehensive PSD program approved in the state, thus EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for insuring compliance with the applicable PSD requirements relating to interstate transport pollution for the 2008 8-hour ozone NAAQS.

Visibility Requirements: EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation "triggered"

under section 110(a)(2)(D)(i)(II) when a new NAAQS becomes effective. This would be the case even in the event a secondary PM_{2.5} NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. Tennessee has submitted SIP revisions for approval to satisfy the requirements of the CAA Section 169A and 169B, and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. On April 24, 2012, EPA published a final rulemaking regarding Tennessee's regional haze program. See 77 FR 24392. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to implement and provide for visibility protection relating to interstate transport pollution for the 2008 8-hour ozone NAAQS as necessary.

5. *110(a)(2)(D)(ii) Interstate and International transport provisions*: Chapter 1200-9-.01(5) *Growth Policy*, of the Tennessee SIP outlines how the State will notify neighboring states of potential impacts from new or modified sources. Tennessee does not have any pending obligation under sections 115 and 126 of the CAA. Additionally, Tennessee has federally approved regulations in its SIP that satisfy the requirements for the NO_x SIP Call. See 70 FR 76408 (December 27, 2005). EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2008 8-hour ozone NAAQS.

6. *110(a)(2)(E) Adequate resources*: EPA is proposing two separate actions with respect to the sub-elements required pursuant to section 110(a)(2)(E). Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. As with the remainder of the infrastructure elements addressed by this notice, EPA is proposing to approve Tennessee's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to

¹⁹ (1) EPA's approval of Tennessee's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements, (2) EPA's approval of Tennessee's PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Tennessee, and (3) EPA's approval of Tennessee's NSR PM_{2.5} Rule.

sub-element 110(a)(2)(E)(ii) (regarding state boards), EPA is proposing to approve in part, and conditionally approve in part, this sub-element. EPA's rationale for today's proposals respecting each sub-element is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), EPA notes that TDEC, through the Tennessee Air Pollution Control Board, is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, fee schedules for the review of plans, and other planning needs. As evidence of the adequacy of TDEC's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Tennessee on April 24, 2012, outlining 105 grant commitments and current status of these commitments for fiscal year 2011. The letter EPA submitted to Tennessee can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2012-0237. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues for fiscal year 2011, therefore, Tennessee's grants were finalized and closed out. EPA has made the preliminary determination that Tennessee has adequate resources for implementation of the 2008 8-hour ozone NAAQS.

With respect to sub-element 110(a)(2)(E)(ii), EPA is proposing to approve in part, and to conditionally approve in part, Tennessee's infrastructure SIP as to this requirement. Section 110(a)(2)(E)(ii) provides that infrastructure SIPs must require compliance with section 128 of CAA requirements respecting State boards. Section 128, in turn, provides at subsection (a)(1) that each SIP shall require that any board or body which approves permits or enforcement orders shall be subject to the described public interest and income restrictions therein. Subsection 128(a)(2) provides that each SIP shall require any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements. In this action, EPA is proposing to conditionally approve Tennessee's infrastructure SIP for element 110(a)(2)(E)(ii) with respect to the applicable section 128(a)(1) requirements, and to approve Tennessee's infrastructure SIP for element 110(a)(2)(E)(ii) with respect to

the applicable section 128(a)(2) requirements.

Today's proposed conditional approval of this sub-element 110(a)(2)(E)(ii) regarding section 128(a)(1) requirements is based upon a commitment made by Tennessee to adopt specific enforceable measures into its SIP within one year to address the applicable portions of section 128(a)(1). Tennessee's commitment letter to EPA, dated March 28, 2012, can be accessed at www.regulations.gov using docket ID No. EPA-R04-OAR-2011-0353. Based upon that commitment, on July 23, 2012, EPA took final action to conditionally approve infrastructure sub-element 110(a)(2)(E)(ii) regarding section 128(a)(1) for purposes of the 1997 8-hour Ozone NAAQS. See 77 FR 42997. In accordance with section 110(k)(4) of the CAA, the commitment from Tennessee provided that the State will adopt the specified enforceable provisions and submit a revision to EPA for approval within one year from EPA's final conditional approval action. In its March 28, 2012, letter, TDEC committed to adopt the above-specified enforceable provisions and submit them to EPA for incorporation into the SIP by no later than July 23, 2012.²⁰ Failure by the State to adopt these provisions and submit them to EPA for incorporation into the SIP by July 23, 2013, would result in today's conditional approval being treated as a disapproval. Should that occur, EPA would provide the public with notice of such a disapproval in the **Federal Register**.²¹

Because the 110(a)(2)(E)(ii) obligations to incorporate provisions into the Tennessee SIP to meet the requirements of section 128(a)(1) have not changed for purposes of the 2008 8-hour Ozone NAAQS, EPA is today proposing to rely upon Tennessee's earlier commitment to adopt specific enforceable measures into its SIP within one year as the basis for a condition of this sub-element as it relates to the section 128(a)(1) requirements. With respect to the remaining sub-elements of 110(a)(2)(E), EPA is proposing to approve these portions of Tennessee's infrastructure SIP. As such, EPA has made the preliminary determination that Tennessee has adequate resources

²⁰ July 23, 2012, is one year from the approval date of EPA's final rulemaking to conditionally approve sub-section 110(a)(2)(E)(ii) regarding section 128(a)(1) for purposes of the 1997 8-hour Ozone NAAQS.

²¹ EPA notes that pursuant to section 110(k)(4), a conditional approval is treated as a disapproval in the event that a state fails to comply with its commitment. Notification of this disapproval action in the **Federal Register** is not subject to public notice and comment.

for implementation of the 2008 8-hour ozone NAAQS.

7. *110(a)(2)(F) Stationary source monitoring system*: Tennessee's infrastructure submission describes how to establish requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. TDEC uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These requirements are provided in Chapter 1200-3-10, *Required Sampling, Recording and Reporting*, of the Tennessee SIP.

Additionally, Tennessee is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and their associated precursors—NO_x, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds (VOCs). Many states also voluntarily report emissions of hazardous air pollutants. Tennessee made its latest update to the NEI on December 31, 2011. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site <http://www.epa.gov/ttn/chieff/iiinformation.html>. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the stationary source monitoring systems related to the 2008 8-hour ozone NAAQS.

8. *110(a)(2)(G) Emergency power*: Chapter 1200-3-15, *Emergency Episode Requirements*, of the Tennessee SIP identifies air pollution emergency episodes and preplanned abatement strategies. These criteria have previously been approved by EPA. EPA has made the preliminary determination that Tennessee's SIP and practices are

adequate for emergency powers related to the 2008 8-hour ozone NAAQS.

9. 110(a)(2)(H) Future SIP revisions:

As previously discussed, TDEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Tennessee has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS.

Tennessee has two areas, Knoxville, TN and Memphis, TN-MS-AR, that are designated as nonattainment for the 2008 8-hour ozone NAAQS. These two areas are classified as marginal nonattainment areas and therefore no attainment demonstration SIPs are required. Section 182(a) of the CAA does require that, for marginal areas, states must submit Base Year Emissions Inventory SIPs, Periodic Emission Inventory SIPs, Emission Statement SIPs and possible SIP updates to their NSR program. While the CAA requires these types of SIPs for marginal areas, the specific requirements and compliance dates for these SIPs, as they relate to the 2008 8-hour ozone NAAQS, are not yet established but are expected to be addressed in the upcoming Implementation Rule for the 2008 Ozone NAAQS SIP Requirements. Tennessee has provided SIP revisions for both the 1-hour ozone and 8-hour ozone standards. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2008 8-hour ozone NAAQS when necessary.

10. 110(a)(2)(I). EPA is proposing to approve Tennessee's infrastructure SIP for the 2008 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(I) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127, and the PSD and visibility protection requirements of part C of the Act.

110(a)(2)(I) (121 consultation)

Consultation with government officials: Chapter 1200-3-9 *Construction and Operating Permits*, as well as the Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Tennessee adopted state-wide consultation procedures for the implementation of transportation

conformity. These consultation procedures include considerations associated with the development of mobile inventories for SIPs. Implementation of transportation conformity, as outlined in the consultation procedures, requires TDEC to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA approved Tennessee's consultation procedures on May 16, 2003 (68 FR 26492). EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with government officials related to the 2008 8-hour ozone NAAQS when necessary.

110(a)(2)(J) (127 public notification)

Public notification: TDEC has public notice mechanisms in place to notify the public of ozone and other pollutant forecasting, including an air quality monitoring Web site with ground level ozone alerts, <http://tn.gov/environment/apc/ozone/>. Chapter 1200-3-15, *Emergency Episode Requirements*, requires that TDEC notify the public of any air pollution episode or NAAQS violation. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2008 8-hour ozone NAAQS when necessary.

110(a)(2)(J) (Part C) PSD and visibility protection: Tennessee demonstrates its authority to regulate new and modified sources of ozone precursors, VOCs, and NO_x to assist in the protection of air quality in Chapter 1200-3-9, *Construction and Operating Permits*. As with infrastructure element 110(a)(2)(C), infrastructure element 110(a)(2)(J) also requires compliance with applicable provisions of the PSD program described in part C of the Act. Accordingly, this portion of element (J) also requires compliance with the Ozone Implementation NSR Update, the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule", and the NSR PM_{2.5} Rule. These SIP revisions²² have been approved into the Tennessee SIP and address requisite requirements of infrastructure element 110(a)(2)(J) (PSD and visibility protection).

With regard to the applicable requirements for visibility protection,

²² (1) EPA's approval of Tennessee's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements, (2) EPA's approval of Tennessee's PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Tennessee and (3) EPA's approval of Tennessee's NSR PM_{2.5} Rule.

EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary PM_{2.5} NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. Tennessee has submitted SIP revisions for approval to satisfy the requirements of the CAA Section 169A and 169B, and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. On April 24, 2012, EPA published a final rulemaking regarding Tennessee's regional haze program. See 77 FR 24392. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to implement PSD programs and to provide for visibility protection related to the 2008 8-hour ozone NAAQS when necessary.

11. 110(a)(2)(K) Air quality and modeling/data: Chapter 1200-3-9-.01(4)(k), *Air Quality Models*, of the Tennessee SIP specifies that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W "Guideline on Air Quality Models," as incorporated into the Tennessee SIP. This demonstrates that Tennessee has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. Additionally, Tennessee supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2008 8-hour ozone NAAQS, for the southeastern states. Taken as a whole, Tennessee's air quality regulations and practices demonstrate that TDEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2008 8-hour ozone NAAQS when necessary.

12. 110(a)(2)(L) Permitting fees: As discussed above, Tennessee's SIP provides for the review of construction permits. Permitting fees in Tennessee are collected through the State's federally-approved title V fees program

and consistent with Chapter 1200–03–26–.02, *Permit-Related Fees*, of the Tennessee Code. EPA has made the preliminary determination that Tennessee's SIP and practices adequately provide for permitting fees related to the 2008 8-hour ozone NAAQS when necessary.

13. 110(a)(2)(M) *Consultation/participation by affected local entities*: Chapter 1200–3–9–.01(4)(k), *Public Participation*, of the Tennessee SIP requires that TDEC notify the public of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. By way of example, TDEC has recently worked closely with local political subdivisions during the development of its Transportation Conformity SIP, Regional Haze Implementation Plan, and Early Action Compacts. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with affected local entities related to the 2008 8-hour ozone NAAQS when necessary.

V. Proposed Action

As described above, with the exception of sub-element 110(a)(2)(E)(ii), EPA is proposing to determine that Tennessee's infrastructure submission, provided to EPA on October 19, 2009, addressed the required infrastructure elements for the 2008 8-hour ozone NAAQS. EPA is proposing to approve in part and conditionally approve in part, Tennessee's SIP submission consistent with section 110(k)(3) of the CAA.

As described above, with the exception of sub-element 110(a)(2)(E)(ii) (as it relates to section 128(a)(1)), TDEC has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to section 110 of the CAA to ensure that the 2008 8-hour ozone NAAQS are implemented, enforced, and maintained in Tennessee. With respect to 110(a)(2)(E)(ii) (referencing section 128 of the CAA), EPA is proposing to conditionally approve Tennessee's infrastructure SIP based on a March 28, 2012, commitment that TDEC will adopt specific enforceable measures into its SIP and submit these revisions to EPA July 23, 2013, to address the applicable portions of section 128. EPA is also proposing to approve Tennessee's infrastructure submission for the 2008 8-hour ozone NAAQS, with the exception of sub-element 110(a)(2)(E)(ii), because its October 19,

2009, submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct

costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 8, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–20668 Filed 8–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0566; FRL–9719–7]

Limited Approval and Disapproval of Air Quality Implementation Plans; Nevada; Clark County; Stationary Source Permits; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period on a proposed limited approval and limited disapproval published on July 24, 2012, concerning permit regulations for stationary sources in Clark County, Nevada.

DATES: Any comments on this proposal must arrive by September 7, 2012.

ADDRESSES: Submit comments, identified by Docket ID Number EPA–R09–OAR–2012–0566, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

2. *Email:* R9airpermits@epa.gov.

3. *Mail or deliver:* Gerardo Rios (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected

should be clearly identified as such and should not be submitted through www.regulations.gov or email. www.regulations.gov is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business

hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, by phone: (415) 972-3534 or by email at yannayon.laura@epa.gov.

SUPPLEMENTARY INFORMATION: On July 24, 2012 (77 FR 43206), EPA proposed a limited approval and limited disapproval of the following regulations submitted for approval into the Clark County portion of the Nevada State Implementation Plan (SIP).

TABLE 1—SUBMITTED NSR RULES

Section No.	Section title	Adopted	Submitted
0	Definitions	3/6/12	5/22/12
12.0	Applicability, General Requirements and Transition Procedures	11/3/09	2/11/10
12.1	Permit Requirements for Minor Sources	11/3/09	2/11/10
12.2	Permit Requirements for Major Sources in Attainment Areas (Prevention of Significant Deterioration).	3/6/12	5/22/12
12.3	Permit Requirements for Major Sources in Nonattainment Areas	5/18/10	9/01/10
12.4	Authority to Construct Application and Permit Requirements For Part 70 Sources	5/18/10	9/01/10

The proposed rule provided a 30-day public comment period. In response to a request from Clark County submitted by letter on August 9, 2012, EPA is extending the comment period for an additional 15 days.

Dated: August 13, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012-20497 Filed 8-21-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2012-0001; FRL-9358-9]

Notice of Filing of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before September 21, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition

number (PP) of interest as shown in the body of this document, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and email address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Biopesticides and Pollution Prevention Division (7511P) or Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), (21 U.S.C. 346a), requesting the establishment or modification of regulations in 40 CFR 180 for residues of pesticide chemicals in or on various food commodities. The

Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available online at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 2E8012.* (EPA-HQ-OPP-2012-0427). Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide tebuconazole, alpha-[2-(4-chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, including its metabolites and degradates, in or on barley, grain at 0.3 parts per million (ppm); vegetable, cucurbit group 9 at 0.4 ppm; and vegetable, fruiting group 8-10 at 1.3 ppm. An enforcement method for plant commodities has been validated on various commodities. It has undergone successful EPA validation and has been submitted for inclusion in the Pesticide Analytical Manual, Vol. II (PAM II). The animal method has also been approved as an adequate enforcement method. Contact: Sidney Jackson, (703) 305-7610, email address: jackson.sidney@epa.gov.

2. *PP 2E8016.* (EPA-HQ-OPP-2012-0357). Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to establish tolerances in 40

CFR part 180 for residues of the insecticide hexythiazox (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety, in or on pepper/eggplant subgroup 8-10B at 1.5 ppm; fruit, pome, group 11-10 at 0.25 ppm; caneberry subgroup 13-07A at 1.0 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 1.0 ppm; and berry, low growing, subgroup 13-07G at 3.0 ppm. A practical analytical method, high pressure liquid chromatography (HPLC) with a ultra violet (UV) detector, which detects and measures residues of hexythiazox and its metabolites as a common moiety is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in this tolerance. Contact: Sidney Jackson, (703) 305-7610, email address: jackson.sidney@epa.gov.

3. *PP 2E8018.* (EPA-HQ-OPP-2012-0405). Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide emamectin benzoate, 4'-epi-methylamino-4'-deoxyavermectin B₁ benzoate (a mixture of a minimum of 90% 4'-epi-methylamino-4'-deoxyavermectin B_{1a} and a maximum of 10% 4'-epi-methylamino-4'-deoxyavermectin B_{1b} benzoate), and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide, in or on imported wine at 0.005 ppm. Adequate analytical methods, HPLC-fluorescence methods, are available for enforcement purposes. Contact: Thomas Harris, (703) 308-9423, email address: harris.thomas@epa.gov.

4. *PP 2E8025.* (EPA-HQ-OPP-2012-0419). Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201W., Princeton, NJ 08540, in cooperation with Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide imazosulfuron, (2-chloro-N-[[[4,6-dimethoxy-2-pyrimidinyl]amino]carbonyl]imidazo[1,2-a]pyridine-3-sulfonamide), in or on tuberous and corm vegetables, crop subgroup 1C at 0.02 ppm; and in melon, crop subgroup 9A at 0.02 ppm. An independently validated analytical method has been submitted for analyzing parent imazosulfuron residues with appropriate sensitivity in all crop commodities for which tolerances are being requested. A revised analytical method using more ion transitions has also been provided. Contact: Andrew Ertman, (703) 308-

9367, email address:

ertman.andrew@epa.gov.

5. *PP 2E8045*. (EPA-HQ-OPP-2012-0583). BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709, requests to establish import tolerances in 40 CFR part 180 for residues of the herbicide imazapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-*H*-imidazol-2-yl]-3-pyridinecarboxylic acid, in or on rapeseed, crop subgroup 20A at 0.05 ppm; sunflower, crop subgroup 20B at 0.05 ppm; and lentils at 0.2 ppm. The proposed analytical method for detecting residues of imazapyr in canola and sunflower raw agricultural commodities (RACs) and processed commodity samples is an liquid chromatography/mass spectrometry (LC/MS/MS) method. The proposed analytical method for detecting residues of imazapyr in lentil RAC samples is an LC/MS/MS method. Enforcement methods for analysis of residues of imazapyr in animal commodities were included in prior submissions. M 3023 is a reliable capillary electrophoresis method with categorical exclusion/ultraviolet (CE/UV) detection for the determination of imazapyr residues in grass forage and grass hay. M 3184 is a reliable CE/UV method for the determination of imazapyr residues in meat, kidney, other meat byproducts, and fat of cattle, sheep, goats, and horses. M 3075 is a reliable CE/UV method for the determination of imazapyr residues in milk. Contact: Hope Johnson, (703) 305-5410, email address: johnson.hope@epa.gov.

6. *PP 1F7872*. (EPA-HQ-OPP-2011-0743). AGRIPHAR S.A., c/o CERES International LLC., 1087 Heartsease Drive, West Chester, PA 19382, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide dodine (n-dodecylguanidine acetate), in or on stone fruits (group 12) at 5 ppm; tree nuts (group 14, except almond hulls) at 0.3 ppm; and almond, hulls (group 12) at 20 ppm. An adequate enforcement method using gas chromatography with mass selective detection (GC/MSD, Method 45137) is available for determining dodine residues in or on plant commodities. Concerning tree crops, a method using LC/MS/MS; METH1595.02 after the samples were extracted with methanol, was submitted. Adequate data collection method validation, independent laboratory validation (ILV), and radiovalidation data for the method has been submitted. Since there is no reasonable expectation of finding residues of dodine in livestock or poultry, no analytical method for animal tissues is required. Contact: Tamue Gibson, (703)

305-9096, email address:

gibson.tamue@epa.gov.

7. *PP 1F7968*. (EPA-HQ-OPP-2012-0480). Dow AgroSciences LLC., 9330 Zionsville Road, Indianapolis, IN 46268, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1 *H*-1,2,4-triazole-1-propanenitrile, including its metabolites and degradates, in or on commodities. Compliance with the tolerance levels specified is to be determined by measuring only myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1 *H*-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1 *H*-1,2,4-triazole-1-propanenitrile (free and bound)), in or on grass, hay at 5 ppm; and grass, forage at 1.5 ppm. Proposed tolerances are in association with a use pattern of grasses grown for seed with a 45-day post-harvest interval (PHI) for hay harvest and a 45-day post-grazing interval (PGI) for grazing. This petition supports expansion of the current State Local Need (SLN) uses for grasses grown for seed to a full national Section 3 use. An adequate enforcement method is available for enforcement of tolerances in plants. Quantitation is by GC using a GC/nitrogen-specific detector (GC/NPD) for myclobutanil and a GC/electron capture detection (GC/ECD) for residues measured as the alcohol metabolite. Contact: Marcel Howard, (703) 305-6784, email address: howard.marcel@epa.gov.

8. *PP 2F8015*. (EPA-HQ-OPP-2012-0515). Chemtura Corporation, 199 Benson Road, Middlebury, CT 06749, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide diflubenzuron, N-[[[4-chlorophenyl]amino]-carbonyl]-2,6-difluorobenzamide (DFB) and its metabolites 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA), in or on orange, grapefruit, and lemon (citrus fruits crop group 10) at 1.3 ppm; and citrus oil processed commodity at 39 ppm. A practical analytical method for detecting and quantifying levels of diflubenzuron in or on food with a limit of detection that allows monitoring of the residue at or above the level set in the tolerance was used to determine residues in citrus raw agricultural commodities (RACs) and processed commodities. Residues of diflubenzuron (DFB) were quantitated by LC/MS/MS, and residues of the metabolites 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) were derivatized with HFBA and quantitated by GC/MS. Contact: Autumn Metzger, (703) 305-

5314, email address:

metzger.autumn@epa.gov.

9. *PP 2F8038*. (EPA-HQ-OPP-2012-0549). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC, 27709-3528, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1*H*-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its metabolite methyl-*N*-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate (BF 500-3); expressed as parent compound, in or on sugarcane, cane at 0.2 ppm. No tolerances are proposed for the processed commodities, refined sugar and molasses, as no concentration of pyraclostrobin residues are expected in these commodities. In plants, the method of analysis is aqueous organic solvent extraction, column cleanup and quantitation by LC/MS/MS. In animals, the method of analysis involves base hydrolysis, organic extraction, column cleanup and quantitation by LC/MS/MS or derivatization (methylation) followed by quantitation by GC/MS. Contact: Dominic Schuler, (703) 347-0260, email address: schuler.dominic@epa.gov.

10. *PP 2F8042*. (EPA-HQ-OPP-2012-0514). K-I CHEMICAL U.S.A., INC., c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603-5126, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide pyroxasulfone (3-[[5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl) pyrazole-4-ylmethylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole) and its metabolite M-3 (5-difluoromethoxy-1-methyl-3-trifluoromethyl-1*H*-pyrazol-4-carboxylic acid), in or on cotton, seed at 0.01 ppm; and pyroxasulfone (3-[[5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl) pyrazole-4-ylmethylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole) and its metabolite M-1 (5-difluoromethoxy-1-methyl-3-trifluoromethyl-1*H*-pyrazol-4-ylmethanesulfonic acid calculated as the stoichiometric equivalent of pyroxasulfone, in or on cotton, gin byproducts at 0.2 ppm. EPA has approved an analytical enforcement methodology including LC/MS/MS to enforce the tolerance expression for pyroxasulfone. Contact: Michael Walsh, (703) 308-2972, email address: walsh.michael@epa.gov.

11. *PP 2F8047*. (EPA-HQ-OPP-2012-0576). Arysta LifeScience North America, LLC., 15401 Weston Parkway, Suite 150, Cary NC 27513, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide fluoxastrobin, (1*E*)-2-[[6-(2-

chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl][5,6-dihydro-1,4,2-dioxazin-3-yl)methanone *O*-methylloxime and its *Z* isomer, (1*Z*)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl][5,6-dihydro-1,4,2-dioxazin-3-yl)methanone *O*-methylloxime, in or on melon (subgroup 9A) at 1.5 ppm; sorghum, grain at 1.5 ppm; sorghum, forage at 4 ppm; and sorghum, stover at 4 ppm. Adequate analytical methodology is available for enforcement purposes. The method comprises microwave solvent extraction followed by a solid phase extraction cleanup and quantification by HPLC/MS/MS. Contact: Heather Garvie, (703) 308-0034, email address: garvie.heather@epa.gov.

Amended Tolerances

1. *PP 2E8012*. (EPA-HQ-OPP-2012-0427). Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to amend the tolerance in 40 CFR 180.474 for residues of the fungicide tebuconazole, alpha-[2-(4-chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, including its metabolites and degradates by removing the following established tolerance, in or on vegetable, fruiting, group 8 at 1.3 ppm once the proposed tolerance for vegetable, fruiting group 8-10 at 1.3 ppm, under "New Tolerance" for *PP 2E8012*, has been established since the proposed new tolerance will supersede the existing tolerance. Contact: Sidney Jackson, (703) 305-7610, email address: jackson.sidney@epa.gov.

2. *PP 2E8016*. (EPA-HQ-OPP-2012-0357). Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.448 for residues of the insecticide hexythiazox (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety, by removing the following established tolerances, in or on pome fruit crop group 11, caneberry subgroup 13A, grape, and strawberry once the proposed tolerances for pepper/eggplant subgroup 8-10B at 1.5 ppm; fruit, pome, group 11-10 at 0.25 ppm; caneberry subgroup 13-07A at 1.0 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 1.0 ppm; and berry, low growing, subgroup 13-07G at 3.0 ppm under "New Tolerance" for *PP 2E8016*, have been established since the proposed new tolerances will supersede the existing tolerances. Contact: Sidney Jackson, (703) 305-7610, email address: jackson.sidney@epa.gov.

3. *PP 2E8036*. (EPA-HQ-OPP-2012-0488). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC, 27419, requests to amend the tolerance in 40 CFR 180.565 for residues of the insecticide thiamethoxam [3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine](CAS Reg. No. 153719-23-4) and its metabolite [*N*-(2-chloro-thiazol-5-ylmethyl)-*N'*-methyl-*N'*-nitro-guanidine], in or on coffee from 0.05 ppm to 0.2 ppm. Syngenta Crop Protection, Inc., has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on raw agricultural commodities. This method is based on crop specific cleanup procedures and determination by liquid chromatography (LC) with either UV or mass spectrometry (MS) detections. The limit of detection (LOD) for each analyte of this method is 1.25 nanogram (ng) injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantification (LOQ) is 0.005 ppm for milk and juices, and 0.01 ppm for all other substrates. Contact: Julie Chao, (703) 308-8735, email address: chao.julie@epa.gov.

4. *PP 1F7872*. (EPA-HQ-OPP-2011-0743). AGRIPHAR S.A., c/o CERES International LLC., 1087 Heartsease Drive, West Chester, PA 19382, requests to amend the tolerances in 40 CFR 180.172 for residues of the fungicide dodine (n-dodecyl guanidine acetate) by removing the following established tolerances in or on cherry, sweet at 3 ppm; cherry, tart at 3 ppm; peach at 5 ppm; pecan at 0.3 ppm; and walnut at 0.3 ppm, upon approval of stone fruits (group 12); and tree nuts (group 14, except almond hulls) under "New Tolerance" for *PP 1F7872*. Contact: Tamue Gibson, (703) 305-9096, email address: gibson.tamue@epa.gov.

5. *PP 1F7937*. (EPA-HQ-OPP-2012-0455). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709-3528, requests to amend the tolerance in 40 CFR 180.617 by increasing the established tolerance for residues of the fungicide metconazole, 5-[(4-chlorophenyl)-methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, measured as the sum of *cis*- and *trans*-isomers, in or on corn, sweet, stover from 4.5 ppm to 25.0 ppm. Independently validated analytical methods have been submitted for analyzing parent metconazole residues with appropriate sensitivity in the raw crop and processed commodities for sweet corn stover for which an increase in tolerance is being requested. Contact:

Tamue Gibson, (703) 305-9096, email address: gibson.tamue@epa.gov.

6. *PP 2F8009*. (EPA-HQ-OPP-2012-0418). Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419-8300, requests to amend the tolerances in 40 CFR 180.449 for the combined residues of the insecticide avermectin B₁ (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A₁) and less than or equal to 20% avermectin B_{1b} (5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A₁) and its delta-8,9-isomer, in or on cotton, delinted seed; and cotton, gin by-products from 0.005 ppm to 0.015 ppm; and strawberry from 0.02 ppm to 0.06 ppm. The analytical methods involve homogenization, filtration, partition, and cleanup with analysis by HPLC-fluorescence detection. The methods are sufficiently sensitive to detect residues at or above the tolerances proposed. All methods have undergone independent laboratory validation. Contact: Jessica Rogala, (703) 347-0263, email address: rogala.jessica@epa.gov.

New Tolerance Exemptions

1. *PP 1E7843*. (EPA-HQ-OPP-2012-0572). Diversey, Inc., 8310 16th St., Sturtevant, WI 53177, requests to establish an exemption from the requirement of a tolerance for residues of FD&C Red No. 40 (conforming to 21 CFR 74.340) when used as a pesticide inert ingredient (colorant) in no-rinse, food contact surface sanitizer (sanitizer) products. The full chemical name of FD&C Red No. 40 is 2-naphthalenesulfonic acid, 6-hydroxy-5-[[2-methoxy-5-methyl-4-sulfophenyl]azo]-, disodium salt (CAS No. 25956-17-6). Commonly used synonyms are Food Red No. 40 and FD&C Red No. 40 in the United States and Allura Red AC in Europe. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: Roger Chesser, (703) 347-8516, email address: chesser.roger@epa.gov.

2. *PP 2E8004*. (EPA-HQ-OPP-2012-0568). Sensient Colors, LLC., 2515 N. Jefferson Ave., St. Louis, MO 63106, requests to establish an exemption from the requirement of a tolerance for residues of FD&C Blue #1 (CAS No. 3844-45-9) when used as a pesticide inert ingredient for use as a seed treatment (dye) in pesticide formulations in accordance with 40 CFR 180.920 pre-harvest applications. FD&C Blue #1 is already approved as a pesticide inert ingredient and has existing tolerance exemptions under 40

CFR 180.910 pre- and post-harvest and 40 CFR 180.930 animal uses. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: Elizabeth Fertich, (703) 347-8560, email address: fertich.elizabeth@epa.gov.

3. *PP 2E8010*. (EPA-HQ-OPP-2012-0461). Rhodia Inc., c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192, requests to establish an exemption from the requirement of a tolerance for residues of the methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate (CAS No. 1174627-68-9) and related reaction products, herein referred to as methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate, under 40 CFR 180.910 when used as a pesticide inert ingredient in pesticide formulations. Rhodia, is requesting that methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate be exempt from the requirement of a tolerance under 40 CFR 180.910. Therefore, Rhodia believes that an analytical method to determine residues in treated crops is not relevant. Contact: Mark Dow, (703) 305-5533, email address: dow.mark@epa.gov.

4. *PP 2E8031*. (EPA-HQ-OPP-2012-0469). Wellmark International, Central Life Sciences, 1501 East Woodfield Road, Suite 200 West, Schaumburg, IL 60173, requests to establish an exemption from the requirement of a tolerance for residues of diisopropyl adipate (CAS No. 6938-94-9) under 40 CFR 180.920 in or on all raw agricultural commodities when used as a pesticide inert ingredient in pesticide formulations applied pre-harvest, as a consequence of mosquito treatment in and around growing crops. Diisopropyl Adipate (DIPA) is currently used in non-food pesticide formulations and is now proposed for use in pesticide formulations intended to control mosquitoes in agricultural areas where food crops may receive incidental exposure. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: David Lieu, (703) 305-0079, email address: lieu.david@epa.gov.

5. *PP 2E8033*. (EPA-HQ-OPP-2012-0456). H.B. Fuller Company, 1200 Willow Lake Boulevard, Saint Paul, MN 55101, requests to establish an inert ingredient low risk polymer exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene (8,900 amu) (CAS No. 25153-46-2) under 40 CFR 180.960 when used as a pesticide inert binder

ingredient for antimicrobial pesticide formulations. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: Mark Dow, (703) 305-5533, email address: dow.mark@epa.gov.

6. *PP 2E8043*. (EPA-HQ-OPP-2012-0491). Suterra LLC., 20950 NE. Talus Place, Bend, OR 97701, requests to establish an exemption from the requirement of a tolerance for residues of n-heptane (CAS No. 142-82-5) under 40 CFR 180.920 in or on raw agricultural commodities, when used as a pesticide inert ingredient in aerosol, pheromone mating disruption products only, and only in concentrations less than 40% of the total formulation, and applied to growing crops only. Suterra LLC., is applying for an exemption from the requirement of a tolerance for n-heptane under 40 CFR 180.920. Therefore, no analytical method to analyze for n-heptane is enclosed with this petition. Contact: David Lieu, (703) 305-0079, email address: lieu.david@epa.gov.

7. *PP 2F8001*. (EPA-HQ-OPP-2012-0591). EcoSMART Technologies, Inc., 20 Mansell Road, Suite 375, Roswell, GA 30076, requests to establish an exemption from the requirement of a tolerance for residues of the biochemical pesticide 2-phenethyl propionate (2-pep) (CAS No. 122-70-3) and its degradates phenethyl alcohol (PEA) (CAS No. 60-12-8) and propionic acid (CAS No. 79-09-4), in or on all food commodities. The petitioner believes no analytical method for residues is required because it is expected that, when used as proposed, 2-pep, and its degradates PEA and propionic acid, would not result in residues that are of toxicological concern. Contact: Cheryl Greene, (703) 308-0352, email address: green.cheryl@epa.gov.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012-20655 Filed 8-21-12; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-B-1127]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On September 13, 2010, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 75 FR 55515. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Venango County, Pennsylvania. Specifically, it addresses the flooding sources Allegheny River, East Sandy Creek, and Sugar Creek.

DATES: Comments are to be submitted on or before November 20, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA-B-1127, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064 or (email)

Luis.Rodriguez3@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064 or (email) Luis.Rodriguez3@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any

existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new

buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 75 FR 55515, in the September 13, 2010, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled “Venango County, Pennsylvania (All Jurisdictions)” addressed the flooding sources Allegheny River, East Sandy

Creek, and Sugar Creek. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for the flooding source Allegheny River. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Venango County, Pennsylvania (All Jurisdictions)				
Allegheny River	Approximately 860 feet upstream of I-80	None	+880	Borough of Emlenton, Township of Clinton, Township of Richland, Township of Rockland, Township of Scrubgrass, Township of Victory.
East Sandy Creek	At the confluence of Sandy Creek	None	+949	Township of Rockland.
	Approximately 460 feet upstream of the confluence with the Allegheny River.	None	+961	
Sugar Creek	Approximately 1,000 feet upstream of the confluence with the Allegheny River.	None	+961	Township of Plum.
	Approximately 0.79 mile downstream of Bradleytown Road.	None	+1201	
	Approximately 0.78 mile downstream of Bradleytown Road.	None	+1201	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

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

ADDRESSES

Borough of Emlenton

Maps are available for inspection at the Borough Building, 511 Hill Street, Emlenton, PA 16373.

Township of Clinton

Maps are available for inspection at the Clinton Township Building, 123 Donaldson Road, Kennerdell, PA 16374.

Township of Plum

Maps are available for inspection at the Plum Township Building, 2360 Sunville Road, Cooperstown, PA 16317.

Township of Richland

Maps are available for inspection at the Richland Township Building, 1740 Rockland Nickleville Road, Emlenton, PA 16373.

Township of Rockland

Maps are available for inspection at the Rockland Township Building, 1115 Rockland Township Road, Kennerdell, PA 16374.

Township of Scrubgrass

Maps are available for inspection at the Scrubgrass Township Office, 4976 Emlenton-Clintonville Road, Emlenton, PA 16373.

Township of Victory

Maps are available for inspection at the Victory Township Municipal Building, 2794 Old Route 8, Polk, PA 16342.

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

Dated: August 8, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012-20644 Filed 8-21-12; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1104]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On May 25, 2010, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 75 FR 29246. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities

affected for Erie County, Pennsylvania (All Jurisdictions). Specifically, it addresses the flooding sources Fourmile Creek and Lake Erie.

DATES: Comments are to be submitted on or before November 20, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA-B-1104, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064 or (email)

Luis.Rodriguez3@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR

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

Correction

In the proposed rule published at 75 FR 29246, in the May 25, 2010, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "Erie County, Pennsylvania (All Jurisdictions)" addressed the flooding sources Fourmile Creek and Lake Erie. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for Lake Erie. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Erie County, Pennsylvania (All Jurisdiction)				
Fourmile Creek	Approximately 735 feet downstream of Access Road	None	+577	Township of Harborcreek, Township of Lawrence Park.
	Approximately 745 feet downstream of Buffalo Road	None	+688	
	Approximately 485 feet downstream of Buffalo Road	None	+693	
	Approximately 400 feet upstream of Mindi Court	None	+770	
Lake Erie	Entire coastline in the Commonwealth of Pennsylvania.	None	+577	Borough of Lake City, Township of Girard, Township of Harborcreek, Township of North East.

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

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

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

ADDRESSES

Borough of Lake City

Maps are available for inspection at the Municipal Building, 2350 Main Street, Lake City, PA 16423.

Township of Girard

Maps are available for inspection at the Municipal Building, 10140 West Ridge Road, Girard, PA 16417.

Township of Harborcreek

Maps are available for inspection at the Township Building, 5601 Buffalo Road, Harborcreek, PA 16421.

Township of Lawrence Park

Maps are available for inspection at the Lawrence Park Township Office, 4230 Iroquois Avenue, Erie, PA 16511.

Township of North East

Maps are available for inspection at the Township Main Office, 1300 West Main Road, North East, PA 16428.

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

Dated: August 8, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012-20648 Filed 8-21-12; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2012-0003; Internal Agency Docket No. FEMA-B-1213]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On August 25, 2011, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. On October 4, 2011, a correction to that original notice was published in the **Federal Register**. This notice provides corrections to that initial table and the correction notice, to be used in lieu of the information published at 76 FR 53082 and at 76 FR 61295. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Smith County, Texas, and Incorporated Areas. Specifically, it

addresses the flooding sources: Black Fork Creek, Black Fork Creek Tributary BF-1, Black Fork Creek Tributary BF-M-1, Black Fork Creek Tributary D, Black Fork Creek Tributary D-1, Black Fork Creek Tributary D-2, Black Fork Creek Tributary D-3, Butler Creek, Gilley Creek, Gilley Creek Tributary G-1, Harris Creek, Henshaw Creek, Indian Creek, Ray Creek, Shackelford Creek, West Mud Creek, West Mud Creek Tributary 11, West Mud Creek Tributary B, West Mud Creek Tributary M-1, West Mud Creek Tributary M-2, West Mud Creek Tributary M-A, West Mud Creek Tributary M-A.1, West Mud Creek Tributary M-A.2, West Mud Creek Tributary M-C, West Mud Creek Tributary M-C.1, West Mud Creek Tributary M-C.2, Wiggins Creek, and Willow Creek.

DATES: Comments are to be submitted on or before November 20, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA-B-1213, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064 or (email) luis.rodriquez3@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064 or (email) luis.rodriquez3@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency

(FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

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

Correction

In the proposed rule published at 76 FR 53082, in the August 25, 2011 issue of the **Federal Register**, and in the correction notice published at 76 FR 61295, in the October 4, 2011 issue, FEMA published a table and its corrections under the authority of 44 CFR 67.4. The table, entitled "Smith County, Texas, and Incorporated Areas" addressed the flooding sources: Black Fork Creek, Black Fork Creek Tributary BF-1, Black Fork Creek Tributary BF-

M-1, Black Fork Creek Tributary D, Black Fork Creek Tributary D-1, Black Fork Creek Tributary D-2, Black Fork Creek Tributary D-3, Black Fork Creek Tributary D-4, Black Fork Creek Tributary D-5, Butler Creek, Gilley Creek, Gilley Creek Tributary G-1, Harris Creek, Henshaw Creek, Indian Creek, Ray Creek, Shackelford Creek, West Mud Creek, West Mud Creek Tributary 11, West Mud Creek Tributary B, West Mud Creek Tributary M-1, West Mud Creek Tributary M-2, West Mud Creek Tributary M-A, West Mud Creek Tributary M-A.1, West Mud Creek Tributary M-A.2, West Mud Creek

Tributary M-C, West Mud Creek Tributary M-C.1, West Mud Creek Tributary M-C.2, Wiggins Creek, and Willow Creek. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for the flooding sources: Black Fork Creek Tributary D, Black Fork Creek Tributary D-1, Black Fork Creek Tributary D-2, Black Fork Creek Tributary D-3, Harris Creek, Indian Creek, Shackelford Creek, West Mud Creek, West Mud Creek Tributary 11, West Mud Creek Tributary B, West Mud Creek Tributary M-1, West Mud

Creek Tributary M-A.1, West Mud Creek Tributary M-A.2, West Mud Creek Tributary M-C, West Mud Creek Tributary M-C.1, West Mud Creek Tributary M-C.2, and Willow Creek. The table also contained two flooding sources, Black Fork Creek Tributary D-4 and Black Fork Creek Tributary D-5, which were removed from the original publication. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

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

Smith County, Texas, and Incorporated Areas

Black Fork Creek	Approximately 0.43 mile upstream of the Prairie Creek West confluence.	None	+380	City of Tyler, Unincorporated Areas of Smith County.
Black Fork Creek Tributary BF-1.	Approximately 0.71 mile upstream of East 5th Street At the Black Fork Creek confluence	+530 +434	+531 +436	City of Tyler, Unincorporated Areas of Smith County.
Black Fork Creek Tributary BF-M-1.	Approximately 1.2 miles upstream of Loop 323	None	+476	City of Tyler.
Black Fork Creek Tributary D	At the Black Fork Creek confluence	+495	+496	City of Tyler.
Black Fork Creek Tributary D-1.	Approximately 1,475 feet upstream of Devine Street .. At the Black Fork Creek confluence	None	+523	City of Tyler.
Black Fork Creek Tributary D-2.	Approximately 1,180 feet upstream of East Front Street. At the Black Fork Creek Tributary D confluence	+468 +477	+469 +473	City of Tyler.
Black Fork Creek Tributary D-3.	At the Black Fork Creek Tributary D confluence	+477	+479	City of Tyler.
Butler Creek	Approximately 1,770 feet upstream of the Black Fork Creek Tributary D confluence. At the Black Fork Creek Tributary D confluence	+488	+487	City of Tyler.
Gilley Creek	Approximately 1,053 feet upstream of Townsend Avenue. At the Black Fork Creek Tributary D confluence	+488	+490	City of Tyler.
Gilley Creek Tributary G-1 ...	At the Black Fork Creek Tributary D confluence	+492	+488	City of Tyler.
Harris Creek	At Elm Street	+493	+491	City of Tyler, Unincorporated Areas of Smith County.
Henshaw Creek	Approximately 340 feet upstream of FM 2661	None	+361	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 640 feet upstream of State Route 155	None	+457	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 310 feet downstream of FM 848	None	+379	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 150 feet upstream of University Boulevard. At the Gilley Creek confluence	None	+474	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 1.14 miles upstream of County Road 2120.	None	+426	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 300 feet upstream of the Ray Creek confluence.	None	+478	Unincorporated Areas of Smith County.
	Approximately 2.16 miles upstream of FM 850	None	+329	Unincorporated Areas of Smith County.
	At the West Mud Creek confluence	+463 +381	+463 +383	Unincorporated Areas of Smith County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Indian Creek	Approximately 0.71 mile upstream of County Road 165.	+475	+477	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 490 feet upstream of the Lake Palestine confluence.	None	+349	
Ray Creek	Approximately 1,950 feet upstream of Loop 323	None	+473	Unincorporated Areas of Smith County.
	Approximately 0.37 mile upstream of the Harris Creek confluence.	None	+332	
Shackleford Creek	Approximately 525 feet upstream of Old Gladwater Highway.	None	+436	City of Tyler, Unincorporated Areas of Smith County.
	At the West Mud Creek confluence	+380	+383	
West Mud Creek	Approximately 620 feet upstream of Paluxy Drive (FM 756).	None	+481	City of Tyler, Unincorporated Areas of Smith County.
	Approximately 200 feet upstream of FM 344 East	+360	+361	
West Mud Creek Tributary 11	Approximately 1,300 feet upstream of Easy Street	+495	+496	City of Tyler.
	At the West Mud Creek confluence	+417	+419	
West Mud Creek Tributary B	Approximately 400 feet upstream of Holly Creek Drive	None	+462	City of Tyler.
	Approximately 125 feet upstream of the West Mud Creek confluence.	+468	+467	
West Mud Creek Tributary M-1.	Approximately 125 feet upstream of Paluxy Drive	+505	+504	City of Tyler.
	At the West Mud Creek Tributary M-A confluence	+442	+444	
West Mud Creek Tributary M-2.	Approximately 1,440 feet upstream of Cross Creek Circle.	+487	+485	City of Tyler.
	Approximately 425 feet upstream of the West Mud Creek confluence.	+464	+463	
West Mud Creek Tributary M-A.	Approximately 1,510 feet upstream of Barbee Drive ...	+481	+469	City of Tyler.
	Approximately 200 feet upstream of the West Mud Creek confluence.	+445	+444	
West Mud Creek Tributary M-A.1.	Approximately 80 feet upstream of Woodland Hills Drive.	None	+509	City of Tyler.
	At the West Mud Creek Tributary M-A confluence	+472	+471	
West Mud Creek Tributary M-A.2.	Approximately 680 feet upstream of Rice Road	+487	+485	City of Tyler.
	At the West Mud Creek Tributary M-A confluence	None	+487	
West Mud Creek Tributary M-C.	Approximately 830 feet upstream of the West Mud Creek Tributary M-A confluence.	None	+493	City of Tyler.
	Approximately 450 feet upstream of the West Mud Creek confluence.	+478	+477	
West Mud Creek Tributary M-C.1.	Approximately 50 feet upstream of Old Jacksonville Highway.	None	+530	City of Tyler.
	Approximately 160 feet upstream of the West Mud Creek Tributary M-C confluence.	+489	+488	
West Mud Creek Tributary M-C.2.	Approximately 1,010 feet upstream of New Copeland Road.	+490	+491	City of Tyler.
	At the West Mud Creek Tributary M-C confluence	None	+502	
Wiggins Creek	Approximately 1,000 feet upstream of Old Bullard Road.	None	+511	Unincorporated Areas of Smith County.
	At the downstream side of the railroad	None	+327	
Willow Creek	Approximately 0.83 mile upstream of Harris Creek Church Road.	None	+373	City of Tyler, Unincorporated Areas of Smith County.
	At the Black Fork Creek confluence	+419	+423	
	Approximately 1.48 miles upstream of Loop 323 North-Northwest.	+482	+480	

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

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

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

ADDRESSES

City of Tyler

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

Unincorporated Areas of Smith County

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

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

Dated: August 8, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012-20646 Filed 8-21-12; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. NHTSA-2012-0096]

RIN 2127-AL22

Withdrawal of Proposed Rule on Insurer Reporting Requirements; List of Insurers Required To File Reports

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

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule published on May 14, 2012, that was intended to implement the requirements contained in Title 49 U.S.C. 33112 of the Insurer Reporting Requirements. This proposed rule required insurers to file reports on their motor vehicle theft loss experiences. An insurer included in any of the appendices that appeared in the proposed rule would be required to file three copies of its report for the 2009

calendar year before October 25, 2012. If the passenger motor vehicle insurers remain listed, they would submit reports by each subsequent October 25. Congress subsequently repealed Title 49 U.S.C. 33112 of the Insurer Reporting Requirements.

DATES: The proposed rule is withdrawn as of August 22, 2012.

FOR FURTHER INFORMATION CONTACT:

Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590, or by electronic mail to Carlita.Ballard@dot.gov. Ms. Ballard's telephone number is (202) 366-5222. Her fax number is (202) 493-2990.

SUPPLEMENTARY INFORMATION: Congress enacted the Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98-547). This legislation added a new Title VI to the Motor Vehicle Information and Cost Savings Act which required the Department of Transportation to promulgate a Theft Prevention Standard for selected passenger cars exhibiting high theft rates. Pursuant to Title 49 U.S.C., Section 33112, *Insurer reports and information*, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR Part

544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Section 33112(f)(2) provided that the agency shall exempt small insurers of passenger motor vehicles if NHTSA found that such exemptions would not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulated that if an insurance company satisfied this definition of a "small insurer," but accounted for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

Section 33112 established requirements that motor vehicle insurers and rental and leasing companies submit information to NHTSA on their actions to prevent or discourage the theft of motor vehicles that are stolen for the purpose of removing certain parts; to prevent or discourage the sale in interstate commerce of used parts that are removed from those vehicles; and to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles. Section 33112 required insurers and rental and leasing companies to provide motor vehicle theft and recovery information in a form consistent with requirements set forth in regulations promulgated by the Secretary of Transportation.

Congress repealed Title 49 U.S.C., Section 33112 *Insurer reports and information*, effective October 1, 2012. Accordingly, the proposed rule to implement the requirements contained in Section 33112, published on May 14, 2012, at 77 FR 28343, entitled *Insurer Reporting Requirements; List of Insurers Required to File Reports*, is hereby withdrawn.

Issued on: August 17, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012-20613 Filed 8-21-12; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BC30

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Transferability of Black Sea Bass Pot Endorsements

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted a revision of a disapproved action (the Resubmittal) from Amendment 18A to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A) for review, approval, and implementation by NMFS. The

Resubmittal would allow black sea bass pot endorsements to be transferred under specific conditions.

DATES: Written comments must be received on or before October 22, 2012.

ADDRESSES: You may submit comments on the amendment identified by “NOAA-NMFS-2012-0128” by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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 (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter “NOAA-NMFS-2012-0128” in the search field and click on “search”. After you located the notice of availability, click on “Submit a Comment” link in that row. This will display the comment Web form. You can enter your submitter information (unless you prefer to remain anonymous), and type your comment on the Web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the “Commenting” section at <http://www.regulations.gov/#/faqs> or the Help section at <http://www.regulations.gov>.

Electronic copies of the Resubmittal may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>. The Resubmittal includes a Regulatory Impact Review and a Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727-824-5305, or email: Kate.Michie@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or

disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

Background

Amendment 18A, implemented through final rulemaking on July 1, 2012, (77 FR 32408, June 1, 2012), included a provision to limit participation in the black sea bass pot segment of the snapper-grouper fishery through the establishment of an endorsement program. The proposed rule for Amendment 18A (77 FR 06991, March 23, 2012) outlined the criteria for qualifying for an endorsement. As of August 22, 2012, 32 South Atlantic snapper-grouper unlimited permit holders qualify for an endorsement, and more could qualify after the appeals process finalizes.

Amendment 18A also contained an action to allow for the transfer of black sea bass pot endorsements. However, NMFS disapproved this action because Amendment 18A and the supporting environmental impact statement identified the incorrect preferred alternative. In addition, there were discrepancies in the record regarding the Council’s discussion of the alternatives. Therefore, NMFS was unable to implement the action in compliance with the Administrative Procedures Act. The Council decided to revise and resubmit the action addressing transferability of black sea bass pot endorsements in an amendment (the Resubmittal). All reasonable alternatives for the transferability action were analyzed in Amendment 18A according to the National Environmental Policy Act, including biological, economic, social, administrative, and cumulative impacts of the action.

The Resubmittal contains one action that would allow transfer of a black sea bass pot endorsement to an individual or entity that holds or simultaneously obtains a valid South Atlantic snapper-grouper unlimited permit. In order to be transferred, a black sea bass pot endorsement must be valid or renewable. Black sea bass pot endorsements may be transferred independently from the South Atlantic snapper-grouper unlimited permit with which it is associated. Landings history would not be transferred with the endorsement. NMFS will attribute black sea bass landings to the associated South Atlantic snapper-grouper unlimited permit regardless of whether the landings occurred before or after the

endorsement was issued. Black sea bass pot endorsements would not be renewed automatically with the South Atlantic snapper-grouper permit with which it is associated. The endorsement must be renewed separately from the permit using the Federal Permit Application for Vessels Fishing in the Exclusive Economic Zone (EEZ).

The Council has submitted for Secretarial review, approval and implementation, a revised action from Amendment 18A establishing black sea bass endorsement transferability. NMFS' decision to approve, partially approve, or disapprove the Resubmittal will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability. After consideration of these factors, and the action's consistency

with the Magnuson-Stevens Act and other applicable law, NMFS will publish a notice of agency action in the **Federal Register** announcing the Agency's decision to approve, partially approve, or disapprove the Resubmittal.

Proposed Rule for Amendment 18A

NMFS proposes a rule that would implement measures outlined in the Resubmittal. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

Comments received by October 22, 2012, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: August 17, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012-20672 Filed 8-21-12; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 77, No. 163

Wednesday, August 22, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 17, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA Submission* @OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Nutrition Assistance in Farmers' Markets: Understanding Shipping Patterns.

OMB Control Number: 0584-0564.

Summary of Collection: The USDA, Food and Nutrition Service (FNS), is pursuing initiatives to improve access to healthy foods among nutrition assistance program clients. Among these are steps to support access to fresh fruits and vegetables through farmers' markets. The overall objective of this collection is to promote opportunities for nutrition assistance program clients to take advantage of farmers' markets. In order to meet this objective, FNS needs to examine the reasons behind the shopping decision at farmers' markets among recipients of Supplemental Nutrition Assistance Program (SNAP) benefits. FNS will conduct a survey with SNAP participants who purchase food in a catchment area around a nationally representative sample of farmers' markets that redeemed at least \$1,000 of SNAP benefits from July 2010 through June 2011. The collection is authorized under Section 17 (7 U.S.C. 2026) (a)(1) of the Food and Nutrition Act of 2008

Need and Use of the Information: The objectives of this study are to: (1) Understand the shopping patterns of the SNAP participants redeeming benefits at farmers' markets, (2) understanding why some SNAP households do not shop at farmers' markets, (3) understanding the characteristics of the farmers' markets serving the participants surveyed. The information gathered in the survey and focus groups will be used by FNS to understand the facilitators and barriers for SNAP participants to shop at farmers' markets. If the information collection is not conducted, USDA/FNS will be unable to improve its understanding of what factors influence SNAP shoppers' decisions to shop at farmers' markets, in order to identify policy changes that could attract program participants to healthier and fresher foods.

Description of Respondents: Individuals or households.

Number of Respondents: 8,468.

Frequency of Responses: Report: On occasion.

Total Burden Hours: 21,207.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012-20634 Filed 8-21-12; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 17, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA Submission*@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Foreign Agricultural Service

Title: CCC's Export Credit Guarantee Program (GSM-102).

OMB Control Number: 0551-0004.

Summary of Collection: The Export Credit Guarantee Program (GSM-102) is administered by the Commodity Credit Corporation (CCC) of the U.S. Department of Agriculture. This program provides guarantees to exporters in order to maintain and increase overseas importers ability to purchase U.S. agricultural goods. The Export Credit Guarantee Program underwrites credit extended by U.S. private banks to approved foreign banks using dollar-denominated, irrevocable letters of credit. The Foreign Agricultural Service (FAS) will collect information from the guarantee application submitted by the participants in writing (via fax or email) or mail.

Need and Use of the Information: FAS will collect information from participating U.S. exporters in order to determine the exporter's eligibility for program benefits. The information is also used in fulfilling CCC obligation under the issued payment guarantee. If the information were not collected CCC would be unable to determine if export sales under the program would be eligible for coverage or, if coverage conformed to program requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 73.

Frequency of Responses: Record keeping, Reporting: On occasion.

Total Burden Hours: 2,555.

Foreign Agricultural Service

Title: Foreign Market Development Cooperator Program (FMD) and Market Access Program (MAP).

OMB Control Number: 0551-0026.

Summary of Collection: The basic authority for the Foreign Market Development Cooperator Program (FMD) is contained in Title VII of the Agricultural Trade Act of 1978, 7 U.S.C. 5721, et seq. Program regulations appear at 7 CFR Part 1484. Title VII directs the Secretary of Agriculture to "establish and, in cooperation with eligible trade organization, carry out a foreign market development cooperator program to maintain and develop foreign markets for United States agricultural commodities and products." The primary objective of the Market Access Program (MAP) is to encourage the development, maintenance, and expansion of commercial export markets for U.S. agricultural products through

cost-share assistance to eligible trade organizations that implement a foreign market development program. The programs are administered by personnel of the Foreign Agricultural Service (FAS).

Need and Use of the Information: The collected information will be used by FAS to manage, plan, evaluate, and account for government resources. Specifically, data is used to assess the extent to which: Applicant organizations represent U.S. commodity interests; benefits derived from market development effort will translate back to the broadest possible range of beneficiaries; the market development efforts will lead to increases in consumption and imports of U.S. agricultural commodities; the applicant is able and willing to commit personnel and financial resources to assure adequate development, supervision and execution of project activities; and private organizations are able and willing to support the promotional program with aggressive marketing of the commodity in question. Without the collected information the program could not be implemented.

Description of Respondents: Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 71.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 93,746.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012-20643 Filed 8-21-12; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF AGRICULTURE

Forest Service

Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Virginia Resource Advisory Committee will meet in Roanoke, Virginia. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to provide advice and recommendations to the U.S. Forest Service concerning projects consistent with title II of the Act. The meeting is open to the public. The purpose of the meeting is for the committee to prioritize and recommend projects for funding.

DATES: The meeting will be held September 14, 2012 from 10 a.m. to 6 p.m. An alternate meeting is planned for September 21, 2012 from 10 a.m. to 6 p.m. This alternate meeting will only be held if needed.

ADDRESSES: The meeting will be held at the George Washington and Jefferson National Forests Supervisor's Office conference room at 5162 Valleypointe Parkway, Roanoke, Virginia 24019. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the George Washington and Jefferson National Forest Supervisor's Office. Please call ahead to 540-265-5100 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

Michael Williams, Public Affairs Specialist, Supervisor's Office, 540-265-5173, mrwilliams04@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed for further information.

SUPPLEMENTARY INFORMATION: Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 7, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Michael Williams, Public Affairs Specialist, George Washington and Jefferson National Forests Supervisor's Office at 5162 Valleypointe Parkway, Roanoke, Virginia 24019; by email to mrwilliams04@fs.fed.us; or via facsimile to 540-265-5145. A summary of the meeting will be available within 21 days of the meeting. Contact the person listed under **FOR FURTHER INFORMATION CONTACT** to obtain meeting summary.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by

contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Resource Advisory Committee Positions Available: Those interested in serving as a member of the Resource Advisory Committee should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 14, 2012.

Thomas Speaks, Jr.,

Forest Supervisor.

[FR Doc. 2012-20621 Filed 8-21-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Nicolet Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nicolet Resource Advisory Committee will meet in Crandon, WI. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to hold a meeting to review and recommend project proposals.

DATES: The meeting will be held on September 12th, 2012 and will begin at 9:30 a.m.

ADDRESSES: The meeting will be held at the Forest County Courthouse, County Boardroom, 200 East Madison Street, Crandon, WI. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Chequamegon-Nicolet National Forest, Laona Ranger District, 4978 Hwy 8 W, Laona, WI 54541. Please call ahead to 715-674-4481 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Penny McLaughlin, RAC Coordinator, USDA, Chequamegon-Nicolet National Forest, Laona Ranger District, 4978 Hwy 8 W, Laona, WI 54541; 715-674-4481; email: pmclaughlin@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review and recommend the project proposal submissions for Title II projects; and (2) Public Comment. The agenda can be reviewed at [Agenda.Nicolet.RAC https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Nicolet](https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Nicolet). Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. A summary of the meeting will be posted at the above Web site within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 13, 2012.

Paul I.V. Strong,

Forest Supervisor.

[FR Doc. 2012-20467 Filed 8-21-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee will meet in Salem, Oregon. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to

review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held on September 27, 2012, at 9:30 a.m.

ADDRESSES: The meeting will be held at Salem Office of the Bureau of Land Management Office, 1717 Fabry Road SE., Salem, Oregon; (503) 375-5646. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Mt. Hood National Forest, 16400 Champion Way, Sandy, Oregon.

FOR FURTHER INFORMATION CONTACT: Connie Athman, Mt. Hood National Forest, 16400 Champion Way, Sandy, OR 97055; (503) 668-1672; Email: cathman@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Election of chairperson; (2) decision on overhead rate for 2013 projects; (3) Public Forum; and (4) Recommendation on 2013 projects. The Public Forum is tentatively scheduled to begin at 10:15 a.m. The agenda will include time for people to make oral statements of three minutes or less. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments may be submitted by sending them to Connie Athman at the address or email given above. A summary of the meeting will be posted at https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 15, 2012.

Chris Worth,

Forest Supervisor.

[FR Doc. 2012-20687 Filed 8-21-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Applications and Reports for Registration as a Tanner or Agent.

OMB Control Number: 0648-0179.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 57.

Average Hours per Response: 2 hours.

Burden Hours: 114.

Needs and Uses: This request is for extension of a current information collection.

The Marine Mammal Protection Act exempts Alaskan natives from the prohibitions on taking, killing, or injuring marine mammals if the taking is done for subsistence or for creating and selling authentic native articles of handicraft or clothing. The natives do not need a permit, but non-natives who wish to act as a tanner or agent for such native products must register with NOAA and maintain and submit certain records. The information is necessary for law enforcement purposes.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer:

OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482-0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *Jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to

OIRA_Submission@omb.eop.gov.

Dated: August 16, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012-20580 Filed 8-21-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Islands Region Coral Reef Ecosystems Logbook and Reporting.

OMB Control Number: 0648-0462.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 5.

Average Hours per Response: At-sea notifications, 3 minutes; logbook reports, 30 minutes; transshipment reports, 15 minutes.

Burden Hours: 382.

Needs and Uses: This request is for extension of a current information collection.

National Marine Fisheries Service (NMFS) requires United States (U.S.) fishing vessels registered for use with, or any U.S. citizen issued with, a Special Coral Reef Ecosystem Fishing Permit (authorized under the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region), to complete logbooks and submit them to NMFS. The information in the logbooks is used to obtain fish catch/fishing effort data on coral reef fishes and invertebrates harvested in designated low-use marine protected areas and on those listed in the regulations as potentially-harvested coral reef taxa in waters of the U.S. exclusive economic zone in the western Pacific region. These data are needed to determine the condition of the stocks and whether the current management measures are having the intended effects, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to incidental takes of endangered and threatened marine animals. NMFS Fishery Management Plans are developed per Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer:

OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482-0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *Jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to

OIRA_Submission@omb.eop.gov.

Dated: August 16, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012-20581 Filed 8-21-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Boundary and Annexation Survey

AGENCY: U.S. Census Bureau, 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, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before October 22, 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(s) and instructions should be directed to Laura Waggoner, U.S. Census Bureau, 4600 Silver Hill Road,

Washington, DC 20233 (or via the Internet at Laura.L.Waggoner@census.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the Boundary and Annexation Survey (BAS) to collect and maintain information about the inventory of the legal boundaries for and the legal actions affecting the boundaries of counties and equivalent entities, incorporated places, minor civil divisions, and federally recognized legal American Indian and Alaska Native areas. This information provides an accurate identification of geographic areas for the Census Bureau to use in conducting the decennial and economic censuses and ongoing surveys, preparing population estimates, and supporting other statistical programs of the Census Bureau, and the legislative programs of the Federal government.

Through the BAS, the Census Bureau asks each government to review materials for its jurisdiction to verify the correctness of the information portrayed. Each government is asked to update the boundaries, supply information documenting each legal boundary change, and provide changes in the inventory of governments.

The BAS universe and mailing materials vary depending both upon the needs of the Census Bureau in fulfilling its censuses and household surveys, and upon budget constraints.

Counties or equivalent entities federally recognized American Indian reservations, off-reservation trust lands, and tribal subdivisions are included in every survey.

In the years ending in 8, 9 and 0, the BAS includes all governmentally active counties and equivalent entities, incorporated places, and legally defined minor civil divisions, and legally defined federally recognized American Indian and Alaska Native areas (including the Alaska Native Regional Corporations). Each governmental entity surveyed will receive materials covering its jurisdiction and one or more forms. These three years coincide with the Census Bureau's preparation for the decennial census. There are less than 40,000 governments in the universe each year.

In all other years, the BAS reporting universe includes all legally defined federally recognized American Indian and Alaska Native areas, all governmental counties and equivalent entities, minor civil divisions in the six New England States and those incorporated places that have a

population of 2,500 or greater. The reporting universe is approximately 14,000 governments due to budget constraints. The Census Bureau only follows up on a subset of governments designated as the reporting universe.

In the years ending in 1 through 7, the Census Bureau may enter into agreements with individual States to modify the universe of minor civil divisions and/or incorporated places to include additional entities that are known by that State to have had boundary changes, without regard to population size. Each year, the BAS will also include each year a single respondent request for municipio, barrio, barrio-pueblo, and subbarrio boundary and status information in Puerto Rico and Hawaiian Homeland boundary and status information in Hawaii.

No other Federal agency collects these data nor is there a standard collection of this information at the State level. The Census Bureau's BAS is a unique survey providing a standard result for use by federal, state, local, and tribal governments and by commercial, private, and public organizations.

II. Method of Collection

The Census Bureau has developed and continues to use several methods to collect information on status and updates for legal boundaries. These methods are:

- State Certification
- Consolidation Agreements
- Annual Response
- Paper BAS
- Digital BAS

Through the BAS State Certification program, the Census Bureau invites the Governor-appointed State Certifying Official (SCO) from each state, except Hawaii, to review the boundary and governmental unit information collected during the previous BAS cycle. The purpose of the State Certification program is to verify the accuracy and validity of the BAS information with the state governments for incorporated places received through the previous BAS cycle. The Census Bureau requests the SCOs to review data files, including the attribute data legal boundary changes, as well as the legal names and functional statuses of incorporated places and minor civil divisions, and any new incorporations or disincorporation reported through the BAS. An SCO may request the Census Bureau to edit the attribute data, add missing records, or remove invalid records if their state government maintains an official record of all effective changes to legal boundaries and governmental units as mandated by

state law. State Certification packages contain: a letter to the Governor, a State Certifying Official Letter, a Discrepancy Letter, and a State Certification Respondent Guide.

Consolidation Agreements allow government officials from state governments the opportunity to participate in consolidation agreements to reduce the burden of response for their local governments. If a state government has legislation requiring local governments to report all legal boundary updates to a state agency (including a map of the annexed area), the state has the option to provide all the updates for their counties (and all associated governments within each county). The state provides the Census Bureau with a list of counties where the state agrees to provide a consolidated update of boundary changes for these counties and all entities within them. The Census Bureau notifies the governments within the counties that the state will be submitting the boundary updates for them and a reminder to submit their updates to the state.

State governments that have legislation requiring governments to report all legal boundary updates to a state agency will also have the opportunity to participate in a consolidation agreement. The state updates the list of minor civil divisions and/or incorporated places that will be surveyed to include only those entities known by the state as having boundary changes. The Census Bureau sends BAS materials to those local governments.

If a county government has legislation requiring local governments to report all legal boundary updates to the county, or if the local governments agree that the county will provide the updates, then the Census Bureau will provide materials only to the county and send a notification to the local governments reminding them to send their updates to the county.

Annual Response involves an announcement letter and a one-page form for the state and county governments that do not have a consolidation agreement. Under Annual Response, counties, tribes and local governments indicate whether or not they have boundary changes to report and provide a current contact person. The governments are requested to fax or email responses. The Annual Response method reduces cost and respondent burden through savings on materials and effort. All governments receive this notification regardless of population size. The Census Bureau will conduct telephone follow-up only to

governments in the reporting universe due to budget constraints.

If a government requests materials through Annual Response, they may choose to download digital materials or have the materials shipped as a traditional paper package or digital media types.

For the traditional paper package, the respondent completes the BAS form and draws the boundary updates on the maps using pencils provided in the package. The package contains large format maps, printed forms and supplies to complete the survey.

The typical BAS package contains:

1. Introductory letter from the Director of the Census Bureau;
2. Appropriate BAS Form(s) that contains entity-specific identification information;
 - a. BAS-1: Incorporated places;
 - b. BAS-2: Counties, parishes, boroughs, and cities;
 - c. BAS-3: Minor civil divisions;
 - d. BAS-4: Newly incorporated places or newly activated incorporated places; and
 - e. BAS-5: American Indian and Alaska Native Areas.
3. BAS Respondent Guide;
4. Set of maps;
5. Return postage-paid envelope to submit boundary changes;
6. Postcard to notify the Census Bureau of no changes to the boundary; and
7. Supplies for updating paper maps.

Digital BAS includes options to receive software and spatial data to make boundary updates or to make boundary updates electronically by submitting a digital file.

A local contact from each government verifies the legal boundary, and then provides boundary changes and updated contact information. The official sign the materials, verify the forms, and return the information to the Census Bureau.

The typical Digital BAS package contains:

1. Introductory letter from the Director of the Census Bureau;
2. Appropriate BAS Form(s) that contains entity-specific identification information;
 - a. BAS-1: Incorporated places;
 - b. BAS-2: Counties, parishes, boroughs, and cities;
 - c. BAS-3: Minor civil divisions;
 - d. BAS-4: Newly incorporated places or newly activated incorporated places; and

e. BAS-5: American Indian and Alaska Native Areas.

3. CD or DVD and program CD; and
4. Postcard to notify the Census Bureau of no changes to the boundary.

The key dates for governments are as follows:

1. Annual Response is emailed, faxed, or mailed to the local contact in November or early December of each year.
2. BAS package of materials is shipped during the months of December, January, February, March, and April of each year.
3. Requests to change the method of participation (i.e., paper to digital submission and vice versa) are due on April 15th of each year.
4. Responses for inclusion in the American Community Survey (publishes annual estimates for geographic areas down to the block group undergoing boundary changes) and Population Estimates Program (produces annual estimates and projections of population, households, and housing units) are due on March 1st of each year.
5. Responses for inclusion in the following year's BAS materials are due on May 31st of each year.

To improve boundary quality in the Census Bureau's Master Address File/ Topologically Integrated Geographic Encoding and Referencing System (MAF/TIGER), the Census Bureau is introducing the Cadastral Data Pilot program as part of the BAS program. The Census Bureau will conduct this pilot project related to the use of cadastral data in boundary updates. The Census Bureau will work with state and county-level participants to develop methods to use the Public Land Survey System (PLSS) and parcel datasets to assess, improve, and maintain the quality of legal boundaries in the Census Bureau's MAF/TIGER Database.

Participation in the pilot project is voluntary and the Census Bureau will telephone potential volunteers to solicit participation in the pilot. Fourteen governments will be chosen to participate and the estimated work burden for participation is 12 hours per participant.

III. Data

OMB Control Number: 0607-0151.

Form Number: BAS 1, BAS 2, BAS 3, BAS 4, BAS 5, BAS 6, BAS-ARF, BASSC-1, BASSC-2.

Type of Review: Regular submission.

Affected Public: All actively functioning counties or statistically equivalent entities, incorporated places (including consolidated cities), minor civil divisions (MCDs), all federally recognized American Indian reservations (AIRs) and off-reservation trust land entities in the United States, and municipios, barrios and subbarrios in Puerto Rico.

Estimated Number of Respondents:
Annual Response Notification: 39,400.

No Change Response: 25,000.

Telephone Follow-up: 14,000.

Packages with Changes: 5,000.

State Certification Review: 50.

State Certification Local Review: 1,000.

Cadastral Data Pilot: 14.

Estimated Time per Response:

Annual Response Notification: 30 min.

No Change Response: 4 hours.

Telephone Follow-up: 30 min.

Packages with Changes: 8 hours.

State Certification Review: 10 hours.

State Certification Local Review: 2 hours.

Cadastral Data Pilot: 12 hours.

Total Hours per Year:

Annual Response Notification: 19,700.

No Change Response: 100,000.

Telephone Follow-up: 7,000.

Packages with Changes: 40,000.

State Certification Review: 500.

State Certification Local Review: 2,000.

Cadastral Data Pilot: 168.

Total Hours: 169,368.

Estimated Total Annual Cost:

\$3,661,736.00.

Respondent's Obligation: Voluntary.

Legal Authority: 13 U.S.C. 6.

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 Office of Management and Budget approval of this information collection. Comments will also become a matter of public record.

Dated: August 16, 2012.
Glenna Mickelson,
Management Analyst, Office of the Chief Information Officer.
 [FR Doc. 2012-20579 Filed 8-21-12; 8:45 am]
BILLING CODE 3510-07-P

DEPARTMENT OF ENERGY

[11-101-NG, 12-36-LNG, 12-44-NG, et al.]

Notice of Orders Granting Applications and an Order Vacating Authority To Import and Export Natural Gas and Liquefied Natural Gas During June 2012

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of orders.

	FE Docket Nos.
NATIONAL FUEL MARKETING COMPANY, LLC	11-101-NG
CHENIERE MARKETING, LLC	12-36-LNG
PAA NATURAL GAS CANADA ULC	12-44-NG
GULF LNG LIQUEFACTION COMPANY, LLC	12-47-LNG
SB POWER SOLUTIONS INC	12-50-LNG
SOUTHERN LNG COMPANY, L.L.C	12-54-LNG
TOURMALINE OIL MARKETING CORP	12-45-NG
MORGAN STANLEY CAPITAL GROUP INC	12-46-NG
EMPIRE NATURAL GAS CORPORATION	12-49-NG
BP CANADA ENERGY MARKETING CORP	12-51-NG
UNION GAS LIMITED	12-52-NG
SUMMITT ENERGY LP	12-53-NG
CHEVRON U.S.A. INC	12-55-LNG
BP ENERGY COMPANY	12-56-LNG
SOUTHWEST ENERGY, L.P	12-57-NG
MARATHON OIL COMPANY	12-58-NG
CENTRAL VALLE HERMOSO, S.A. DE C.V	12-59-NG
ST. LAWRENCE GAS COMPANY, INC	12-60-NG
IRVING OIL TERMINALS, INC	12-62-NG
S.D. SUNNYLAND ENTERPRISES, INC	12-63-LNG
NEXEN ENERGY MARKETING U.S.A. INC	12-65-NG
SEMPRA LNG MARKETING, LLC	12-66-LNG
ETC MARKETING, LTD	12-67-NG
CONCORD ENERGY LLC	12-68-NG
NEW YORK STATE ELECTRIC & GAS COMPANY, LLC	12-69-NG
MONETA ENERGY SERVICES, LTD	12-70-NG

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2012, it issued Orders granting applications and an Order vacating authority to import and export natural gas and liquefied natural gas (LNG). These Orders are summarized in the attached appendix and may be found on the FE Web site at <http://www.fossil.energy.gov/>

programs/gasregulation/authorizations/Orders-2012.html. They are also available for inspection and copying in the Office of Fossil Energy, Office of Natural Gas Regulatory Activities, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m.,

Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 13, 2012.

John A. Anderson,
Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	FE Docket No.	Authorization holder	Description of action
3101	06/05/12	12-44-NG	PAA Natural Gas Canada ULC.	Order granting blanket authority to import natural gas from Canada and vacating prior authority, Order 3002.
3102	06/07/12	12-36-LNG	Cheniere Marketing, LLC	Order granting blanket authority to export previously imported LNG by vessel.
3103	06/15/12	12-69-NG	New York State Electric & Gas Corporation.	Order granting blanket authority to import/export natural gas from/to Canada.
3104	06/15/12	12-47-LNG	Gulf LNG Liquefaction Company, LLC.	Order granting long-term multi-contract authority to export LNG by vessel from the Gulf LNG Energy, LLC Terminal to free trade agreement nations.
3105	06/15/12	12-50-LNG	SB Power Solutions Inc	Order granting long-term multi-contract authority to export LNG to free trade agreement nations in Central America, South America and the Caribbean by vessel in ISO containers.

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

Order No.	Date issued	FE Docket No.	Authorization holder	Description of action
3106	06/15/12	12-54-LNG	Southern LNG Company, L.L.C.	Order granting long-term multi-contract authority to export LNG by vessel from the Elba Island Terminal to free trade agreement nations.
3107	06/22/12	12-45-NG	Tourmaline Oil Marketing Corp.	Order granting blanket authority import natural gas from Canada.
3108	06/22/12	12-46-NG	Morgan Stanley Capital Group Inc.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3109	06/22/12	12-49-NG	Empire Natural Gas Corporation.	Order granting blanket authority to import natural gas from Canada.
3110	06/22/12	12-51-NG	BP Canada Energy Marketing Corp.	Order granting blanket authority to import/export natural gas from/to Canada.
3111	06/22/12	12-52-NG	Union Gas Limited	Order granting blanket authority to import/export natural gas from/to Canada.
3112	06/22/12	12-53-NG	Summitt Energy LP	Order granting blanket authority to import/export natural gas from/to Canada.
3113	06/22/12	12-55-LNG	Chevron U.S.A. Inc	Order granting blanket authority to import LNG from various international sources by vessel.
3114	06/22/12	12-56-LNG	BP Energy Company	Order granting blanket authority to import LNG from various international sources by vessel.
3115	06/22/12	12-57-NG	Southwest Energy, L.P	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3116	06/22/12	12-58-NG	Marathon Oil Company	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3117	06/22/12	12-59-NG	Central Valle Hermoso, S.A. de C.V.	Order granting blanket authority to import/export natural gas from/to Mexico.
3118	06/22/12	12-60-NG	St. Lawrence Gas Company, Inc.	Order granting blanket authority to import natural gas from Canada.
3119	06/22/12	12-62-NG	Irving Oil Terminals, Inc	Order granting blanket authority to export natural gas to Canada.
3120	06/22/12	12-63-LNG	S.D. Sunnyland Enterprises, Inc.	Order granting blanket authority to import LNG from various international sources by vessel.
3121	06/22/12	12-65-NG	Nexen Energy Marketing U.S.A. Inc.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3122	06/22/12	12-66-LNG	Sempra LNG Marketing, LLC	Order granting blanket authority to import LNG from various international sources by vessel.
3123	06/22/12	12-67-NG	ETC Marketing, Ltd	Order granting blanket authority to export natural gas to Mexico.
3124	06/22/12	12-68-NG	Concord Energy LLC	Order granting blanket authority to import/export natural gas from/to Canada.
3125	06/22/12	12-70-NG	Moneta Energy Services Ltd	Order granting blanket authority to import/export natural gas from/to Canada.
3001-A	06/22/12	11-101-NG	National Fuel Marketing Company, LLC.	Order vacating blanket authority to import/export natural gas from/to Canada.

[FR Doc. 2012-20635 Filed 8-21-12; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2130-066]

Pacific Gas and Electric Company; Notice of Receipt of Application

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Pinecrest Lake Shoreline Management Plan.
- b. *Project No.:* 2130-066.
- c. *Date Filed:* July 23, 2012.
- d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* Spring Gap—Stanislaus Hydroelectric Project.

f. *Location:* The project is located on the Middle Fork and South Forks of the Stanislaus River in Calaveras and Tuolumne Counties, California, and occupies approximately 1,060 acres within the Stanislaus National Forest, managed by the U.S. Department of Agriculture—Forest Service (Forest Service).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard Doble, Senior License Coordinator, PG&E, 245 Market Street, San Francisco, CA 94105. Phone: (415) 973-4480.

i. *Forest Service Contact:* Ms. Susan Skalaski, Forest Supervisor, Stanislaus National Forest, 19777 Greenley Road, Sonoma, CA 95370. Phone: (209) 532-3671.

j. *FERC Contact:* Any questions regarding this notice should be addressed to Dr. Mark Ivy at (202) 502-6156 or by email: Mark.Ivy@ferc.gov.

k. *Description of the Application:* After receiving Forest Service approval on July 18, 2012, PG&E filed a shoreline management plan (SMP) for Pinecrest Lake pursuant to a mandatory requirement of the Forest Service's section 4(e) condition No. 29, which was included as part of the license for the Spring Gap-Stanislaus Hydroelectric Project. The Forest Service, which owns and manages all of the shoreline lands at Pinecrest Lake as part of the Stanislaus National Forest, required the SMP as a sub-plan under condition No. 29 (Recreation Facilities and Administration) to manage the reservoir shoreline at Pinecrest Lake and to address privately owned boat docks and mooring balls, and include zoning of

certain sections of shoreline for swimming, fishing, and shoreline boat access.

Since all of the shoreline at Pinecrest Lake is owned and managed by the Forest Service, the Commission has no authority to dictate how the SMP is to be implemented. As such, the Commission views PG&E's filing as informational and will not take action on it. Any comments on the SMP should be directed to the Forest Service.

1. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. Enter the docket number (P-2130) in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

Dated: August 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012-20599 Filed 8-21-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12-495-000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Filing

Take notice that on August 6, 2012, Kinder Morgan Interstate Gas Transmission LLC (KMIGT), 370 Van Gordon Street, Lakewood, Colorado 80228, filed an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA), for authorization to abandon a 432-mile segment of the Pony Express Pipeline system (Pipeline Segment) located from Platte County, Wyoming to Lincoln County, Kansas and to construct new replacement facilities. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket

number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

KMIGT proposes to abandon the Pipeline Segment in place and sell it to Kinder Morgan Pony Express Pipeline LLC (KMPXP). The proposed abandonment also includes three natural gas compressor stations totaling 33,175 horsepower (hp), meter stations, and appurtenant facilities. These facilities will be removed. KMPXP will purchase, convert, own, and operate the Pipeline Segment as a crude oil pipeline to meet the increasing demand for pipeline transportation of crude oil. In order to maintain gas service of 104,000 Dth/day to existing firm customers, KMIGT proposes to construct new replacement facilities: (1) One new mainline compressor station totaling 14,200 hp, (2) two lateral pipelines which will be approximately 3 miles and 22 miles in length, (3) two booster compressor units, 500 and 350 hp, and (4) certain auxiliary facilities. KMPXP will reimburse KMIGT for the costs associated with the construction of the new facilities. The total estimated construction cost of the proposed facilities is \$56,605,800. KMIGT proposes in-service date of August 1, 2014.

Any questions regarding this application should be directed to Skip George, Manager of Regulatory, Kinder Morgan Interstate Gas Transmission LLC, 370 Van Gordon Street, Lakewood, Colorado 80228, phone (303) 914-4969.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically

via the Internet in lieu of paper, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 5, 2012.

Dated: August 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012-20597 Filed 8-21-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14423-000]

KC Scoby Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 11, 2012, KC Scoby Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the existing Scoby Dam located on Cattaraugus Creek in Erie County, New York. 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 Scoby Dam Hydroelectric Project would redevelop an abandoned project and would consist of the following: (1) An existing 338-foot-long and 40-foot-high ogee-shaped concrete gravity dam with a 183-foot-long spillway; (2) an existing impoundment having a surface area of 22 acres and a storage capacity of 52 acre-feet at an elevation of 1,080 feet mean sea level (msl); (3) a new powerhouse with two new identical turbine-generator units with an installed capacity of 500 kilowatts each; (4) a new 480-volt, approximately 1-mile-long transmission line extending from the powerhouse to an existing three-phase line; and (5) appurtenant facilities. The proposed project would have an annual generation of 6.5 gigawatt-hours.

Applicant Contact: Kelly Sackheim, KC Scoby Hydro, LLC, 5096 Cocoa Palm Way, Fair Oaks, CA 95628; phone: (301) 401-5978.

FERC Contact: Monir Chowdhury; phone: (202) 502-6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll

free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14423-000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 15, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-20595 Filed 8-21-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Energy Regional State Committee Meeting

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Energy Regional State Committee Meeting

August 23, 2012 (9:00 a.m.–3:00 p.m.)

This meeting will be held at the Sheraton New Orleans, 500 Canal Street, New Orleans, LA 70130.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07-32	Entergy Services, Inc.
Docket No. EL00-66	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01-88	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL07-52	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08-60	Ameren Services Co. v. Entergy Services, Inc.
Docket No. EL09-43	Arkansas Public Service Commission v. Entergy Services, Inc.
Docket No. EL09-50	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09-61	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10-55	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10-65	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL11-34	Midwest Independent System Transmission Operator, Inc.
Docket No. EL11-63	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. ER05-1065	Entergy Services, Inc.
Docket No. ER07-682	Entergy Services, Inc.
Docket No. ER07-956	Entergy Services, Inc.
Docket No. ER08-1056	Entergy Services, Inc.
Docket No. ER09-833	Entergy Services, Inc.
Docket No. ER09-1224	Entergy Services, Inc.
Docket No. ER10-794	Entergy Services, Inc.
Docket No. ER10-1350	Entergy Services, Inc.
Docket No. ER10-1676	Entergy Services, Inc.
Docket No. ER10-2001	Entergy Arkansas, Inc.
Docket No. ER10-3357	Entergy Arkansas, Inc.
Docket No. ER11-2131	Entergy Arkansas, Inc.
Docket No. ER11-2132	Entergy Gulf States, Louisiana, LLC.
Docket No. ER11-2133	Entergy Gulf States, Louisiana, LLC.
Docket No. ER11-2134	Entergy Mississippi, Inc.
Docket No. ER11-2135	Entergy New Orleans, Inc.
Docket No. ER11-2136	Entergy Texas, Inc.
Docket No. ER11-3156	Entergy Arkansas, Inc.
Docket No. ER11-3657	Entergy Arkansas, Inc.
Docket No. ER12-480	Midwest Independent Transmission System Operator, Inc.
Docket No. ER12-2390	Entergy Services, Inc.
Docket No. ER12-2411	Entergy Arkansas, Inc.

These meetings are open to the public.

For more information, contact Peter Nagler, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502-6083 or peter.nagler@ferc.gov.

Dated: August 15, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-20598 Filed 8-21-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12-12-000]

Coordination Between Natural Gas and Electricity Markets; Supplemental Notice of Technical Conference

As announced in the Notices issued on July 5, 2012¹ and July 17, 2012,² the Federal Energy Regulatory Commission (Commission) staff will hold a technical conference on Thursday, August 23, 2012, from 9:00 a.m. to approximately 4:45 p.m. local time to discuss gas-electric coordination issues in the Southeast region.³ The agenda and list of roundtable participants for this conference is attached. This conference is free of charge and open to the public. Commission members may participate in the conference.

The Southeast region technical conference will be held at the following venue: Commission Headquarters, 888 First Street NE., Washington, DC 20426.

If you have not already done so, those who plan to attend the Southeast region technical conference are strongly encouraged to complete the registration form located at: www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-form.asp. There is no deadline to register to attend the conference. The dress code for the conference will be business casual. The agenda and

¹ Coordination between Natural Gas and Electricity Markets, Docket No. AD12-12-000 (July 5, 2012) (Notice of Technical Conferences) (<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13023450>); 77 Fed. Reg. 41184 (July 12, 2012) (<http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16997.pdf>).

² Coordination between Natural Gas and Electricity Markets, Docket No. AD12-12-000 (July 17, 2012) (Supplemental Notice of Technical Conferences) (<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13029403>).

³ As indicated in the July 5, 2012 notice, for purposes of this technical conference, the Southeast region includes Southern Company, Duke and Progress Energy, TVA, and other areas south of PJM Interconnection, L.L.C. and East of Southwest Power Pool, Inc. and Electric Reliability Council of Texas.

roundtable participants for the remaining technical conferences will be issued in supplemental notices at later dates.

The Southeast region technical conference will not be transcribed. However, there will be a free webcast of the conference. The webcast will allow persons to listen to the Southeast region technical conference, but not participate. Anyone with Internet access who desires to listen to the Southeast region conference can do so by navigating to www.ferc.gov's Calendar of Events and locating the Southeast region technical conference in the Calendar. The Southeast region technical conference will contain a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit www.CapitolConnection.org or call 703-993-3100.⁴

Information on this and the other regional technical conferences will also be posted on the Web site www.ferc.gov/industries/electric/indus-act/electric-coord.asp, as well as the Calendar of Events on the Commission's Web site www.ferc.gov. Changes to the agenda or list of roundtable participants for the Southeast region technical conference, if any, will be posted on the Web site www.ferc.gov/industries/electric/indus-act/electric-coord.asp prior to the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or 202-208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

For more information about this and the other regional technical conferences, please contact:

Pamela Silberstein, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8938, Pamela.Silberstein@ferc.gov.

Sarah McKinley, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8004, Sarah.McKinley@ferc.gov.

⁴ The webcast will continue to be available on the Calendar of Events on the Commission's Web site www.ferc.gov for three months after the conference.

Dated: August 15, 2012.

Kimberly D. Bose,
Secretary.



Coordination Between Natural Gas and Electricity Markets

Docket No. AD12-12-000
Southeast Region- August 23, 2012
FERC Headquarters, Washington, DC

Agenda

- 9:00-9:15 Welcome and Opening Remarks
- 9:15-9:45 Regional Energy Infrastructure Presentation (FERC staff)
- 9:45-11:45 First Roundtable Discussion: Gas-Electric Coordination in the Southeast

There has been significant growth in the Southeast region's use of gas as fuel for electricity generation. By some accounts, the Southeast now leads the country both in the total volume of electric generation gas demand, and as a percentage of total US gas burn.⁵ Given this rapid increase in gas demand for electricity generation, the region's electric and gas entities may face future operational challenges involving coincident peaks, the flexibility of pipeline services, and infrastructure adequacy.

Roundtable participants are encouraged to be prepared to respond to the following:

1. How do Southeastern electric utilities' scheduling and commitment practices align with the NAESB standard natural gas pipeline business practices? How do the region's utilities and generators manage the risks associated with differences in the daily practices from one industry to the next?
2. Given the significant percentage of gas demand for industrial use in this region, as well as the growth in electric generation gas demand, how is the adequacy of gas infrastructure evaluated? Are there ways the region can better deploy existing capacity to meet demand growth?
3. What types of services offered by natural gas pipelines and storage

⁵ See, e.g., Energy Information Administration, Electricity Monthly Update, July 26, 2012, http://www.eia.gov/electricity/monthly/update/resource_use.cfm.

providers in the Southeast best meet the needs of gas-fired generators in the region? Would generators in the region like to see additional flexibility in pipeline services, and if so, what kind? Do other pipeline shippers need additional flexibility in pipeline services, and if so, what kind? What would gas pipelines and storage providers need to be able to provide such additional flexibility?

4. How are pipelines managing the growth in electric generation demand from an operational standpoint? Is there a need for different pipeline operational management tools, such as a different imbalance management mechanism or penalty structure, for gas-fired generation as opposed to other pipeline shippers?

5. Do pipelines in this region offer additional nomination opportunities beyond the four NAESB nomination cycles? If so, are such offerings available to both firm and interruptible shippers? What are the costs of providing additional nomination opportunities? Are there impacts to natural gas end users?

11:45–1:15 Break

1:15–2:30 Second Roundtable

Discussion: Communications/
Coordination/Information-Sharing

Several commenters suggest that communication and coordination issues may differ between the regions, and therefore are more appropriately addressed on a regional basis. Given the region's risk for severe weather, the increase in the use of gas to fuel electric generation in the Southeast, and the proximity of natural gas supplies, gas and electric entities in the Southeast may need to address communication and coordination issues that affect both real time and near-real time operations and outage planning for both gas and electric systems, as well as long term gas and electric planning and coordination.

Roundtable participants are encouraged to be prepared to respond to the following:

1. How is coordination and information-sharing regarding both emergency and planned outages handled by affected gas and electric entities? Are improvements needed? Please describe what kind of coordination and information is shared and with whom in preparation for extreme events that simultaneously and significantly affect both the gas and electric sectors. Are there any limitations on communication that seem unnecessarily restrictive? Should entities coordinate weather forecasts?

2. What is the impact of electric system outages upon the gas system,

and vice versa? Will the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 impose new requirements upon inter-industry communication and coordination? If so, how are the industries planning for those new requirements?

3. Are there particular communication and coordination challenges associated with managing the expected increase in use of natural gas for electric generation? If so, are improvements needed and who should be responsible for implementing improvements?

4. Given the extent to which gas-fired generation dominates the Florida generation portfolio, and also considering the high utilization factors of pipelines such as Florida Gas Transmission and Gulfstream especially during the summer months, how do the utilities in Florida manage communications and coordination, both day-to-day and during extreme events?

2:30–2:45 Break

2:45–4:15 Third Roundtable

Discussion: Reliability

The bulk electric system is typically planned, as required by the mandatory reliability standards, to meet projected customer demands and system performance criteria, even under single element contingency conditions. Interstate natural gas pipelines are planned and expanded to meet firm gas delivery contracts between the pipelines and one or more shippers. As noted, the Southeast will be experiencing a significantly increased reliance on natural gas generation in the coming years. This may serve to highlight concerns about the future reliability and interdependencies of the bulk electric system and the interstate natural gas pipeline system as the amount of natural gas-fired generation increases.

Roundtable participants are encouraged to be prepared to respond to the following:

1. Has any entity in the Southeast region performed any kind of assessment regarding the region's natural gas pipeline capacity, taking into account present and future electric generation needs? If not, is such a study needed? If so, who would undertake it? Are additional, coordinated studies of the natural gas and electric systems needed to analyze forecasted resource mix and/or interdependency risks from curtailments or contingencies? Can this issue be addressed through existing transmission planning processes? If not, is a different process needed?

2. A number of commenters in other regions referred to recent functional exercises that allowed participants from the natural gas and electric industries,

as well as state regulators, to assess emergency response plans and provided a forum to discuss and implement improvements.⁶ Given its experience with hurricanes and other extreme weather events, are sufficient emergency coordination procedures in place in the Southeast? Does the growth in the use of gas for electric generation mean that more coordination or other advance preparations are needed, especially for extreme weather events?

3. To what extent do pipelines in the Southeast region rely upon electric compression? Is this reliance likely to change in the future, and if so, how? What would be the impact, if any, of an electricity outage upon the pipeline's deliverability? Do pipelines study risk of loss of electricity? If so, how do the results of such study affect operational planning?

4:15–4:45 Closing

Roundtable Participants:

Dave Ciarlone, Manager, Global Energy Services, Alcoa (on behalf of Process Gas Consumers)

Valerie Crockett, Senior Program Manager, Regulatory & Policy, TVA

Mark Evans, Vice President, North American Gas & Power, BG Group

Frank Ferazzi, Senior Vice President & General Manager, WGP East, Williams Gas Pipeline

Michael Frey, Vice President, Gas Supply & Operations, Municipal Gas Authority of Georgia (on behalf of APGA)

Paul Greenwood, Manager for Americas Gas Marketing, ExxonMobil Gas & Power Marketing (on behalf of Natural Gas Supply Association)

Laura Heckman, Director, Business Development, Kinder Morgan

Greg Henderson, President & CEO, Southeast Alabama Gas District

David Jewell, Senior Vice President, Gas Systems & Capacity Planning, CenterPoint Energy

Keith Maust, Manager Director-Gas Supply and Scheduling, Piedmont Natural Gas Company, Inc.

Michael McMahon, Senior Vice President and General Counsel, Boardwalk Pipeline Partners, LP

Wayne Moore, Compliance Officer and Vice President, Southern Company

Carl Haga, Gas Services Director, Southern Company

John Moura, Associate Director, Reliability Assessment, NERC

Eric Senkowitz, Director of Operations, Florida Reliability Coordinating Council

⁶ See, e.g., Texas Pipeline Association March 30, 2012 Comments at 2 (responding to Commissioner Moeller's February 3, 2012 Request for Comments).

Donald Sipe, PretiFlaherty (on behalf of American Forest and Paper Association)
 Richard Smead, Director, Navigant Consulting, Inc. (on behalf of America's Natural Gas Alliance)
 Andrew Soto, Senior Managing Counsel, American Gas Association

[FR Doc. 2012-20596 Filed 8-21-12; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9717-6]

Notice of Approval of Title V Operating Permit for Peabody Western Coal Company (Navajo Nation EPA No. NN-OP 08-010)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that the Navajo Nation Environmental Protection Agency ("NNEPA"), acting with authority from the United States Environmental Protection Agency ("EPA") delegated pursuant to 40 C.F.R. Part 71, has issued a federal Clean Air Act Title V operating permit to Peabody Western Coal Company ("Peabody") governing air emissions from Peabody's mining operation at the Kayenta Mine, Black Mesa Complex in Arizona on the reservation of the Navajo Nation.

DATES: NNEPA, acting as EPA's delegate, issued notice of a final permit decision on May 21, 2012. Certain portions of the permit became effective on April 14, 2011. All other provisions of the permit became effective on March 13, 2012 after the Environmental Appeals Board denied Peabody's petition for review. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit by October 22, 2012.

ADDRESSES: The documents relevant to the above-referenced permits are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. To arrange for viewing of these documents call Roger Kohn at (415) 972-3973.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Air Division Permits Office, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Charlene Nelson, Navajo Nation Air Quality Control Program, Operating Permits Section, P.O. Box 529, Fort Defiance, AZ 86504.

Anyone who wishes to review the EPA Environmental Appeals Board decision described below can obtain it at <http://www.epa.gov/eab/>.

Notice of Final Action and Supplementary Information: NNEPA issued notice of a final revised permit decision to Peabody for its surface coal mining operations on the Navajo reservation, Title V Operating Permit No. NN-OP 08-010 ("Peabody permit"), on May 21, 2012. The Peabody revised permit was initially issued by NNEPA on April 14, 2011. EPA's Environmental Appeals Board ("EAB") received a petition for review by Peabody of this revised permit on May 16, 2011. On March 13, 2012, the EAB issued an order denying review of the petition. *See In re Peabody Western Coal Company*, CAA Appeal No. 11-01 (EAB March 13, 2012) (Order Denying Petition for Review). The petition challenged, among other things, NNEPA's use of tribal law in issuing the permit and inclusion in the permit for conditions III(B), IV(C), IV(D), IV(E), IV(G), IV(H), IV(I), IV(K), IV(L), and IV(Q) tribal law citations in parallel with the federally enforceable 40 C.F.R. Part 71 requirements. After the EAB's denial of review, Peabody filed a motion with the EAB for reconsideration, which was denied on April 17, 2012. Pursuant to 40 C.F.R. 71.11(l)(5) and 124.19(f)(1), final agency action by EPA has occurred because agency review procedures before the EAB have been exhausted and NNEPA has issued a final permit decision.

Dated: August 8, 2012.

Deborah Jordan,

Director, Air Division, Region IX.

[FR Doc. 2012-20654 Filed 8-21-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2012-0390; FRL-9358-2]

Pesticide Products; Receipt of Applications To Register New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and

Rodenticide Act (FIFRA), as amended. EPA is publishing this Notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before September 21, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2012-0390 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone or email. The mailing address for each contact person listed is Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting on a docket that addresses multiple products, please indicate to which registration number(s) your comment applies. If you are commenting on a docket that addresses multiple products, please indicate to which registration number(s) your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications for New Uses

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA, and is publishing this Notice of such applications pursuant to section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *Registration File Symbol:* 100–RURR. *Docket Number:* EPA–HQ–OPP–2011–0665. *Applicant:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Emamectin benzoate. *Product Type:* Insecticide. *Proposed Uses:* Outdoor commercial ornamental nursery production. *Contact:* Thomas Harris, (703) 308–9423, email address: harris.thomas@epa.gov.

2. *Registration Numbers:* 100–526, 100–541, and 100–603. *Docket Number:* EPA–HQ–OPP–2012–0301. *Applicant:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Simazine. *Product Type:* Herbicide. *Proposed Uses:* Citrus fruits (crop group 10), pome fruits (crop group 11), stone fruits (crop group 6) and tree nuts (crop group 14, except almond hulls). *Contact:* Hope Johnson, (703) 305–5410, email address: johnson.hope@epa.gov.

3. *Registration Numbers:* 100–902 and 100–904. *Docket Number:* EPA–HQ–OPP–2011–0665. *Applicant:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Emamectin benzoate. *Product Type:* Insecticide. *Proposed Uses:* Vegetable, cucurbit, group 9. *Contact:* Thomas Harris, (703) 308–9423, email address: harris.thomas@epa.gov.

4. *Registration Numbers:* 264–748 and 264–752. *Docket Number:* EPA–HQ–OPP–2012–0427. *Applicant:* Bayer CropScience LP., P.O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Tebuconazole. *Product Type:* Fungicide. *Proposed Use:* Fruiting vegetables (group 8–10). *Contact:* Heather Garvie, (703) 308–0034, email address: garvie.heather@epa.gov.

5. *Registration Numbers:* 352–594, 352–597, 352–638, and 352–640. *Docket Number:* EPA–HQ–OPP–2012–0420. *Applicant:* DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, NJ 19714–0030. *Active ingredient:* Indoxacarb. *Product Type:*

Insecticide. *Proposed Uses:* Dry bean, snap bean, small fruit vine climbing (subgroup 13–07F), low growing berry (subgroup 13–07H). *Contact:* Julie Chao, (703) 308–8735, email address: chao.julie@epa.gov.

6. *Registration Numbers:* 400–461, 400–466, and 400–487. *Docket Number:* EPA–HQ–OPP–2012–0515. *Applicant:* Chemtura Corporation, 199 Benson Road, Middlebury, CT 06749. *Active ingredient:* Diflubenzuron. *Product Type:* Insecticide. *Proposed Use:* Citrus (crop group 10–09). *Contact:* Autumn Metzger, (703) 305–5314, email address: metzger.autumn@epa.gov.

7. *Registration File Symbol:* 524–ANO. *Docket Number:* EPA–HQ–OPP–2012–0545. *Applicant:* Monsanto, 1300 I St., NW., Suite 450 East, Washington, DC 20005. *Active ingredient:* Dicamba. *Product Type:* Herbicide. *Proposed Use:* Dicamba-tolerant MON 87708 Soybeans. *Contact:* Michael Walsh, (703) 308–2972, email address: walsh.michael@epa.gov.

8. *Registration Numbers:* 5481–219 and 5481–430. *Docket Number:* EPA–HQ–OPP–2012–00203. *Applicant:* Amvac Chemical Company, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706. *Active ingredient:* 1-Naphthalenacetic Acid. *Product Type:* Fungicide. *Proposed Uses:* Avocado, mamey sapote, mango, rambutan; and pome fruit group 11–10. *Contact:* Rosemary Kearns, (703) 305–5611, email address: kearns.rosemary@epa.gov.

9. *Registration Numbers:* 5481–433 and 5481–533. *Docket Number:* EPA–HQ–OPP–2012–0203. *Applicant:* Amvac Chemical Company, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706. *Active ingredient:* 1-Naphthalenacetic Acid, Ethyl Ester. *Product Type:* Fungicide. *Proposed Uses:* Avocado, mamey sapote, mango, rambutan; and pome fruit group 11–10. *Contact:* Rosemary Kearns, (703) 305–5611, email address: kearns.rosemary@epa.gov.

10. *Registration Number:* 5481–541. *Docket Number:* EPA–HQ–OPP–2012–0203. *Applicant:* Amvac Chemical Company, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706. *Active ingredient:* 1-Naphthalenacetic Acid, Sodium Salt. *Product Type:* Fungicide. *Proposed Uses:* Avocado, mamey sapote, mango, rambutan; and pome fruit group 11–10. *Contact:* Rosemary Kearns, (703) 305–5611, email address: kearns.rosemary@epa.gov.

11. *Registration File Symbol:* 7969–GUL. *Docket Number:* EPA–HQ–OPP–2012–0492. *Applicant:* BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC

27709. *Active ingredient:* Dicamba. *Product Type:* Herbicide. *Proposed Uses:* Dicamba-tolerant MON 87708 Soybeans; and conventional crops, including asparagus, corn (field, seed, silage, and popcorn), cotton (conventional), grass grown for seed, proso millet, pasture hay, rangeland, farmstead (non-cropland), farmstead turf (non-cropland), Conservation Reserve Program, small grains (barley, oats, triticale, and wheat), sorghum, soybean (conventional), sugarcane, and sod farms. *Contact:* Michael Walsh, (703) 308-2972, email address: walsh.michael@epa.gov.

12. *Registration Numbers:* 7969-185, 7969-186, 7969-247, 7969-258, 7969-289, and 7969-291. *Docket Number:* EPA-HQ-OPP-2012-0549. *Applicant:* BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC 27709. *Active ingredient:* Pyraclostrobin. *Product Type:* Fungicide. *Proposed Use:* Sugarcane. *Contact:* Dominic Schuler, (703) 347-0260, email address: schuler.dominic@epa.gov.

13. *Registration Numbers:* 59639-154 and 59639-166. *Docket Number:* EPA-HQ-OPP-2012-0419. *Applicant:* Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596. *Active ingredient:* Imazosulfuron. *Product Type:* Herbicide. *Proposed Uses:* Melons (cantaloupe, citron melon, muskmelon, watermelon); and vegetables, tuberous and corm (arracacha, arrowroot, Chinese artichoke, Jerusalem artichoke, edible Canna, bitter cassava, sweet cassava, chayote (root), chufa, dasheen, ginger, leren, potato, sweet potato, taniel, turmeric, yam bean, and true yam). *Contact:* Mindy Ondish, (703) 605-0723, email address: ondish.mindy@epa.gov.

14. *Registration Number:* 62719-407. *Docket Number:* EPA-HQ-OPP-2012-0480. *Applicant:* Dow AgroSciences LLC., 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Myclobutanil. *Product Type:* Fungicide. *Proposed Use:* Formulation use into fungicide products. *Contact:* Marcel Howard, (703) 305-6784, email address: howard.marcel@epa.gov.

15. *Registration Number:* 62719-410. *Docket Number:* EPA-HQ-OPP-2012-0480. *Applicant:* Dow AgroSciences LLC., 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Myclobutanil. *Product Type:* Fungicide. *Proposed Use:* Grass grown for hay and forage. *Contact:* Marcel Howard, (703) 305-6784, email address: howard.marcel@epa.gov.

16. *Registration Numbers:* 63588-91, 63588-92, and 63588-93. *Docket*

Number: EPA-HQ-OPP-2012-0439. *Applicant:* K-I Chemical U.S.A., Inc., c/o Landis International, Inc., 3185 Madison Highway, P.O. Box 5126, Valdosta, GA 31603-5126. *Active ingredient:* Pyroxasulfone. *Product Type:* Herbicide. *Proposed Use:* Wheat. *Contact:* Michael Walsh, (703) 308-2972, email address: walsh.michael@epa.gov.

17. *Registration Numbers:* 63588-91, 63588-92, and 63588-93. *Docket Number:* EPA-HQ-OPP-2012-0514. *Applicant:* K-I Chemical U.S.A., Inc., c/o Landis International, Inc., 3185 Madison Highway, P.O. Box 5126, Valdosta, GA 31603-5126. *Active ingredient:* Pyroxasulfone. *Product Type:* Herbicide. *Proposed Use:* Cotton. *Contact:* Michael Walsh, (703) 308-2972, email address: walsh.michael@epa.gov.

18. *Registration Numbers:* 66330-64 and 66330-65. *Docket Number:* EPA-HQ-OPP-2012-0576. *Applicant:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419-8300. *Active ingredient:* Fluoxastrobin. *Product Type:* Fungicide. *Proposed Uses:* Melon, subgroup 9A; and sorghum. *Contact:* Heather Garvie, (703) 308-0034, email address: garvie.heather@epa.gov.

19. *Registration File Symbol:* 70506-EOA. *Docket Number:* EPA-HQ-OPP-2012-0431. *Applicant:* United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. *Active ingredient:* Endothall (dipotassium salt). *Product Type:* Herbicide. *Proposed Use:* Apples. *Contact:* Grant Rowland, (703) 347-0254, email address: rowland.grant@epa.gov.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 14, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012-20666 Filed 8-21-12; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the

agreement is available through the Commission's Web site (www.fmc.gov) or by contacting the Office of Agreements at (202) 523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 012084-001.

Title: HLAG/Maersk Line Gulf-South America Slot Charter Agreement.

Parties: A.P. Moller-Maersk A/S and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006-4007.

Synopsis: The amendment would increase the amount of space to be chartered, provide for a new initial term of the agreement, and restates the agreement to correct a pagination error. The parties have requested expedited review.

By Order of the Federal Maritime Commission.

Dated: August 17, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012-20652 Filed 8-21-12; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523-5843 or by email at OTI@fmc.gov.

Anselm K. Nwankwo dba Anze Global Logistics (NVO & OFF), 45 Harrison Street #A, Roslindale, MA 02131. *Officer:* Anselm K. Nwankwo, Sole Proprietor (Qualifying Individual), Application Type: New NVO & OFF License.

Armada AVS Corp (NVO), 709 E. Walnut Street Carson, CA 90746. *Officers:* Marina Agueeva, Secretary (Qualifying Individual), Vadim Kornilov, President. Application Type: New NVO License. Horizon Lines of Guam, LLC (NVO), 4064 Colony Road Suite 200,

Charlotte, NC 28211. Officers: Brian W. Taylor, Chairman (Qualifying Individual), Michael F. Zendan, II, Secretary. Application Type: Add Trade Name Horizon Lines Express.

Interlink Forwarding Corporation (NVO & OFF), 2030 E. 4th Street Suite 229B, Santa Ana, CA 92705. Officers: Emiliano D. De Gregoris, Director (Qualifying Individual), Lisa N. Nguyen, Director. Application Type: New NVO & OFF License.

Ocean Wide Logistics Inc. (NVO & OFF), 288 West 238th Street 5h, Bronx, NY 10463. Officer: Angel N. Espinoza, President/Secretary (Qualifying Individual). Application Type: New NVO & OFF License.

Panalpina FMS, Inc. (OFF), 22750 Glenn Drive, Sterling, VA 20164. Officers: Stella A. Thomas, Assistant Vice President (Qualifying Individual), Lucas E. Kuehner, Managing Director. Application Type: QI Change.

Nippon Express U.S.A., Inc. (OFF), 590 Madison Avenue #2401, New York, NY 10022. Officers: Atsushi Tempaku, Vice President (Qualifying Individual), Kenji Fujii, President. Application Type: QI Change.

Nippon Express U.S.A. (Illinois), Inc. dba Arrow International GNS dba Arrow Pacific dba Arrow Atlantic (NVO), 401 E. Touhy Avenue Des Plaines, IL 60018. Officers: Atsushi Tempaku, Assistant Secretary (Qualifying Individual), Kenji Fujii, President. Application Type: QI Change.

Transera International Logistics (OFF), 10343 Sam Houston Park Drive #110, Houston, TX 77064. Officers: Carl P. Sorensen, Jr., Vice President (Qualifying Individual), Rosemary Marr, CEO. Application Type: Name Change to C. H. Robinson Project Logistics, Inc.

Vilkon N.A., Inc. (NVO & OFF), 19550 International Blvd. #301, Seatac, WA 98188. Officers: Genadij Solovjov, Vice President (Qualifying Individual), Konstantin Kobrianov, President. Application Type: Add NVO Service.

USTC Global, Inc. (NVO), 20695 S. Western Avenue #132, Torrance, CA 90501. Officers: Do Young (a.k.a. Bob) Ban, CEO (Qualifying Individual), Youngeui Kim, CFO. Application Type: QI Change.

By the Commission.

Dated: August 17, 2012.

Karen V. Gregory,
Secretary.

[FR Doc. 2012-20662 Filed 8-21-12; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been reissued pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 015255N.

Name: Triways Shipping Lines, Inc.

Address: 11938 S. La Cienega Blvd., Hawthorne, CA 90250.

Date Reissued: July 18, 2012.

License No.: 022773N.

Name: WLI (USA) Inc.

Address: 175-01 Rockaway Blvd., Suite 228, Jamaica, NY 11434.

Date Reissued: July 15, 2012.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012-20661 Filed 8-21-12; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 6, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Randal S. Shannon*, Drexel, Missouri; to acquire control of Bates County Bancshares, Inc., and thereby indirectly acquire control of Security Bank, both in Rich Hill, Missouri.

Board of Governors of the Federal Reserve System, August 17, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012-20626 Filed 8-21-12; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *The Adirondack Trust Company Employee Stock Ownership Trust*, Saratoga Springs, New York; to acquire additional voting shares of 473 Broadway Holding Corporation, and thereby indirectly acquire additional voting shares of The Adirondack Trust Company, both in Saratoga Springs, New York.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Drummond Banking Company*, Chiefland, Florida; to merge with Williston Holding Company, and thereby indirectly acquire Perkins State Bank, both in Williston, Florida.

Board of Governors of the Federal Reserve System, August 17, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012-20627 Filed 8-21-12; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on September 19, 2012, from 9:00a.m. to 3:00 p.m. Eastern Time.

Location: Washington Marriott, 1221 22nd Street NW., Washington, DC 20037. For up-to-date information, go to the ONC Web site, <http://healthit.hhs.gov>.

Contact Person: MacKenzie Robertson, Office of the National Coordinator, HHS, 355 E Street SW., Washington, DC 20201, 202-205-8089, Fax: 202-260-1276, email: mackenzie.robertson@hhs.gov. Please call the contact person 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.

Agenda: The committee will hear reports from its workgroups and updates from ONC and other Federal agencies. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the

advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at <http://healthit.hhs.gov>.

Procedure: ONC is committed to the orderly conduct of its advisory committee meetings. 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 two days prior to the Committee's meeting date. Oral comments from the public will be scheduled in the agenda. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting until close of business on that day.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact MacKenzie Robertson at least seven (7) days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 2).

Dated: August 15, 2012.

MacKenzie Robertson,

FACA Program Lead, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012-20582 Filed 8-21-12; 8:45 am]

BILLING CODE 4150-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on September 6, 2012, from 10:00 a.m. to 3:00 p.m./Eastern Time.

Location: Washington Marriott, 1221 22nd Street NW., Washington, DC 20037. For up-to-date information, go to the ONC Web site, <http://healthit.hhs.gov>.

Contact Person: MacKenzie Robertson, Office of the National Coordinator, HHS, 355 E Street SW., Washington, DC 20201, 202-205-8089, Fax: 202-260-1276, email: mackenzie.robertson@hhs.gov. Please call the contact person 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.

Agenda: The committee will hear reports from its workgroups and updates from ONC and other Federal agencies. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at <http://healthit.hhs.gov>.

Procedure: ONC is committed to the orderly conduct of its advisory committee meetings. 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 two days prior to the Committee's meeting date. Oral comments from the public will be scheduled in the agenda. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting until close of business on that day.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact MacKenzie Robertson at least seven (7) days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 2).

Dated: August 15, 2012.

MacKenzie Robertson,

FACA Program Lead, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012-20584 Filed 8-21-12; 8:45 am]

BILLING CODE 4150-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information (RFI): Guidance on Data Streamlining and Reducing Undue Reporting Burden for HHS-Funded HIV Prevention, Treatment, and Care Services Grantees

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) seeks assistance from key stakeholders to identify and address grant-related data flow challenges and offer specific solutions for streamlining data collection and reducing undue burden among HHS grantees funded to provide HIV prevention, treatment, and care services.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5:00 p.m. EST on September 21, 2012.

ADDRESSES: Electronic responses are strongly preferred and may be addressed to HIVOpenData@hhs.gov. Written responses should be addressed to: U.S. Department of Health and Human Services, Room 443-H, 200 Independence Ave. SW., Washington, DC 20201. Attention: HIV Data Streamlining.

FOR FURTHER INFORMATION CONTACT:

Andrew D. Forsyth Ph.D. or Vera Yakovchenko, MPH, Office of HIV/AIDS and Infectious Disease Policy (OHAIDP), (202) 205-6606.

SUPPLEMENTARY INFORMATION: In July 2010, the White House released the National HIV/AIDS Strategy for the United States (NHAS) that outlined four key goals: (1) Reduce the number of people who become infected with HIV, (2) increase access to care and optimize health outcomes for people living with HIV, (3) reduce HIV-related health disparities, and (4) achieve a more coordinated national response to the HIV epidemic in the United States.¹ Central to the latter goal were two related directives. The first was to develop improved mechanisms to monitor, evaluate, and report on progress toward achieving national goals. The second was to simplify grant administration activities by standardizing data collection and reducing undue grantee reporting requirements for federal HIV programs.

To respond to these directives, on April 11, 2012, the Secretary of Health and Human Services issued a memo directing Operating Divisions and Staff Divisions to achieve three critical goals: (1) Finalize a set of common, core HIV/AIDS indicators in a manner consistent with the Institute of Medicine's recommendations; (2) develop operational plans to deploy core indicators, streamline data collection, and reduce reporting burden by at least 20-25 percent for HHS HIV/AIDS service grantees; and, (3) deploy operational plans within 15 months of reaching consensus on common indicators and their specification. This RFI is intended to elicit stakeholder input on strategies to streamline data collection and reduce undue reporting burden.

The call for improved data streamlining and grants administration simplification described in the NHAS is consistent with other federal initiatives. In December 2009, the White House released its Open Government Directive,² which seeks to improve access to government data in a manner that enhances transparency, fosters participation through the public's contribution of ideas and expertise to decision-making, and enhances collaboration through new partnerships within the federal government and between public and private institutions. Notwithstanding existing clearance requirements or legitimate reasons to protect information, the Directive highlighted the need for the following: (1) Timely and accessible online publication of government information,

(2) improved quality of government information, (3) Creation of a culture of open government, and (4) establishment of a policy framework for Open Government. The release of the Directive was followed shortly thereafter by the HHS Open Government Plan,³ which seeks to build upon the White House's emphasis on transparency, collaboration, and collaboration to ensure that the government works better for all Americans.

An important contribution of the HHS Open Government Plan is its reference to new technological developments that make it possible to streamline the collection, sharing, and processing of programmatic and fiscal data in a manner that facilitates greater transparency, participation, and collaboration, even in such critical and sensitive areas as the HHS investment in HIV prevention, treatment, and care services. At present, HHS Operating Divisions (OpDivs) that fund these services use a mixture of non-interoperable information processing systems to collect programmatic, fiscal, and other data from grantees. Moreover, these systems often utilize different indicators to monitor the progress of HIV/AIDS programs that vary in their specifications (e.g., numerators, denominators, time frames) and other key parameters. As a result, many required HIV/AIDS data elements are inconsistent, impede evaluation and monitoring across all relevant HHS-funded services, and add undue burden to HIV services grantees charged with reporting obligations often from multiple HHS OpDivs.

This request for information seeks public comment on potential strategies to streamline data collection and reduce undue reporting burden for HIV prevention, treatment, and care services grantees,⁴ while preserving the capacity to monitor the provision of high quality services. Domains of interest include but are not limited to the following:

1. Describe to the extent possible the administrative burden that HHS HIV prevention, treatment, and care services grantees experience. Please detail the number of data systems, indicators, elements, numbers of reports, or other quantifiable requirements needed to fulfill *current* federal HIV reporting obligations.

2. Estimate the time, resources, and personnel costs required on a monthly basis to meet federal HIV grants administration requirements and fulfill

¹ <http://www.whitehouse.gov/administration/eop/onap/nhas>.

² <http://www.whitehouse.gov/open/documents/open-government-directive>.

³ <http://www.hhs.gov/open/plan/opengovernmentplan/transparency/dashboard.html>.

⁴ Excluded are surveillance and research grants.

reporting obligations. Please rank these requirements in two ways: First, please indicate those that constitute the greatest burden and opportunity cost in terms of limiting the provision of high-quality HIV services. Second, please identify those that provide or have the potential to provide the most benefit for program planning, monitoring, evaluation, or deficiency remediation.

3. Please describe specific recommendations for simplifying grants administration that could address the greatest sources of grantee burden and reduce any associated adverse effects on staff and service provision. What specific changes in federal, state, local, or tribal policies, improvements in public health infrastructure, or other modifications are needed to achieve an optimized balance between data streamlining, reporting burden and outcome monitoring? What specific policies and infrastructure are needed to standardize data requirements at the national, state, and local levels across federal programs supporting HIV/AIDS services?

4. What specific solutions have grantees, sub-grantees, or contractors implemented to manage the administration requirements for data collection, monitoring, and reporting? For example, what tools and strategies have been developed to integrate federal data and reporting requirements, generate reports, monitor local programs, and identify the need for corrective action? What lessons do these hold for how HHS might streamline data collection and lessen administrative burdens for its HIV grantees? And how might the federal government improve the utility of program monitoring data to enhance the efficiency and effectiveness of program services implemented for state, local, and tribal governments?

5. As part of its effort, HHS seeks to reduce by at least 20–25 percent data elements collected for monitoring HIV services. What specific recommendations can you offer for eliminating indicators or data elements without affecting adversely HHS's capacity to monitor outcomes of its HIV grants programs? Please estimate the potential improvements these recommendations would yield in terms of personnel time, costs, or other resources saved.

6. What extant HIV data reporting systems or approaches to data reporting are the most effective, efficient, and acceptable for grantees? What recommendations would you offer for facilitating both data reporting and data sharing between funders and grantees? What data from funders are the highest priorities for grantees to monitor

performance, identify services gaps, or otherwise inform resource allocation and program implementation decisions?

7. What approach is recommended for mapping and measuring achievement of reduced HIV reporting burden? Please recommend any relevant publications or reports that may prove illustrative.

Dated: August 8, 2012.

Ronald O. Valdiserri,
Deputy Assistant Secretary for Health,
Infectious Diseases.

[FR Doc. 2012–20578 Filed 8–21–12; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Information on Quality Measurement Enabled by Health IT—Extension Date for Responses

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Health and Human Services (HHS).

ACTION: Notice of extension in comment period.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) requests information from the Public, including diversified stakeholders (health information technology (IT) system developers, including vendors; payers, quality measure developers, end-users, clinicians, health care consumers) regarding current successful strategies and challenges regarding quality measurement enabled by health IT. Quality measurement—the assessment of the timeliness, completeness and appropriateness of preventive services, diagnostic services, and treatment provided in health care—has been most generally conducted via paper chart information capture, manual chart abstraction, and the analysis of administrative claims data. Through this notice, the comment period has been extended. The subject matter content remains unchanged from the original notice which was previously published on July 20, 2012 (www.GPO.gov/fdsys/PKG/FR-2012-07-20/html/2012-17530.htm)

DATES: Submit comments on or before September 21, 2012.

ADDRESSES: Electronic responses are preferred and should be addressed to HIT-PTQ@AHRQ.hhs.gov. Non-electronic responses will also be accepted. Please send by mail to: Rebecca Roper, Agency for Healthcare Research and Quality, Attention: HIT-Enabled QM RFI Responses, 540 Gaither

Road, Room 6000, Rockville, MD 20850, Phone: 301–427–1535.

FOR FURTHER INFORMATION CONTACT: Please identify in the subject line of emails that you are inquiring about the “Question about HIT-enabled QM RFI”. Contact Angela Nunley, email: Angela.Nunley@AHRQ.hhs.gov, Phone: 301–427–1505, or, Rebecca Roper, email: Rebecca.Roper@AHRQ.hhs.gov, Phone: 301–427–1535.

SUPPLEMENTARY INFORMATION:

Background

Health information technology (IT), such as, electronic health records (EHR) which may include clinical decision support and health information exchange, has seen a tremendous increase in adoption in recent years. Some institutions have successfully used health IT to generate health IT-enabled quality measures which may be retooled versions of established paper-based or administrative data-driven quality measures or (preferably) they are “de novo” quality measures that were developed with the capabilities of health IT in mind. These new health IT-enabled quality measures seek to leverage the use of electronic clinical data capture, analysis and reporting to measure and report electronically enabled quality measures in order to facilitate improvements in the quality of care provided. AHRQ supports research to improve health care quality through enhancements in the safety, efficiency, and effectiveness of health care available to all Americans. Through this RFI, AHRQ is seeking information related to successful strategies and/or remaining challenges encountered regarding the development of health IT-enabled quality measure development and reporting.

Health IT has the potential to advance quality measurement and reporting through the use of efficient automated data collection, analysis, processing, and its ability to facilitate information exchange among and across care settings, providers, and patients. Quality measurement enabled by health IT, referred to as health IT-enabled quality measurement, is an emerging field. There are numerous perspectives on how to achieve the future state of quality measurement. These varied perspectives sometimes include competing choices and challenges: (1) Underdeveloped or unavailable infrastructure (e.g., whether the measure set should be extensive or parsimonious); (2) incompleteness of the measure set (e.g., developing measures that matter to consumers, how to measure value); and (3) technology

challenges (e.g., how might unstructured data be captured in the EHR to be used for measurement, if and how to integrate patient-generated and clinician-generated data).

In preparation for the development of this RFI, AHRQ generated a high-level overview of the current state of quality measurement through health IT, challenges facing the advancement of quality measurement enabled by health IT, a partial catalog of current efforts seeking to address those challenges, and, possibilities for the next generation of health IT-enabled quality measurement. This report, "An environmental snapshot — Quality Measurement Enabled by Health IT: Overview, Possibilities, and Challenges" can be found at <http://healthit.AHRQ.gov/HealthITEnabledQualityMeasurement/Snapshot.pdf>.

AHRQ is committed to garnering further insight in order to facilitate meaningful advancements in the next generation of quality measurement. Through this Request for Information AHRQ is seeking information on the building blocks of health IT-enabled quality measurement in terms of perspectives, practicalities, and priorities. Responses will be used in conjunction with deliberative activities to inform the development of a summary report to be released to the public approximately in summer 2013.

Respondents should note that this Request for Information is completely voluntary; respondents are welcome to address as many of the questions posed as they wish.

AHRQ would appreciate if you clearly indicate the number of the question area to which you are providing a response. This RFI is for planning purposes only. Responses to this are not offers, cannot be accepted by the Government to form a binding contract, and are not intended to influence regulation.

Questions Regarding Quality Measurement Enabled by Health IT

1. Briefly describe what motivates your interest in clinically-informed quality measures through health information technology. To what extent is your interest informed by a particular role (e.g., provider, payer, government, vendor, quality measure developer, quality improvement organization, standards organization, consumer advocate) in this area?

2. Whose voices are not being heard or effectively engaged at the crucial intersection of health IT and quality measurement? What non-regulatory approaches could facilitate enhanced engagement of these parties?

3. Some quality measures of interest have been more difficult to generate, such as measures of greater interest to consumers, measures to assess value, specialty-specific measures, measures across care settings (i.e., measures enabled by health information exchange), and measures that take into account variations in risk. Describe the infrastructure that would be needed to ensure development of such measures.

4. What health IT-enabled quality measures, communication channels, and/or technologies are needed to better engage consumers either as contributors of quality information or as users of quality information?

5. How do we motivate measure developers to create new health IT-enabled quality measures (which are distinct from existing measures which were retooled into electronically-produced quality measures) that leverage the unique data available through health IT? Please provide examples of where this has been successfully. What new measures are in the pipeline to leverage data available through health IT?

6. Describe how quality measurement and "real-time" reporting could inform clinical activity, and the extent to which it could be considered synonymous with clinical decision support.

7. Among health IT-enabled quality measures you are seeking to generate in a reliable fashion, including the currently proposed Meaningful Use Stage 2 measure set, what types of advances and/or strategies for e-measure generation if pursued, would support more efficient generation of quality measures?

8. Many EHR, HIE, and other health IT vendors are developing software code to support measures. Tools such as the Measure Authoring Tool (MAT) were created to improve efficiencies in the process of creating and implementing eMeasures. What additional approaches might be used to enable consistent, accurate, and efficient quality measurement when using health IT?

9. How do you see the establishment and adoption of data standards impacting the future of health IT-enabled quality measurement? For what types of quality measures should a combination of natural language processing and structured data be considered?

10. Much support has been voiced for the need of longitudinal data in quality measurement. What are the strengths and weaknesses of different information architectures and technologies to support health IT-enabled quality measurement across time and care settings? How can data reuse (capture

once, use many times) be supported in different models? What examples might you provide of successful longitudinal health IT-enabled quality measurement (across time and/or across multiples care settings)?

11. What are the most effective means by which to educate providers on the importance of health IT-enabled quality measurement and how clinical information is used to support health IT-enabled quality measurement and reporting? How can providers be better engaged in the health IT-enabled quality measurement process?

12. What is the best way to facilitate bi-directional communication between vendors and measure developers to facilitate collaboration in health IT-enabled measure development?

13. To what extent do you anticipate adopting payment models that use quality measurement informed by electronic clinical records (as opposed to exclusively using claims data)? What strategies are you pursuing to gain access to clinical data and test the reliability of health IT-enabled clinical outcome measures? How do you anticipate sharing quality measure results with consumers and other stakeholders?

14. What tools, systems, and/or strategies has your organization been using to aggregate information from various EHRs and other health IT for use in quality measurement? What strategies is your organization pursuing to move toward greater automation in quality measurement?

15. Please describe scalable programs, demonstrations, or solutions (domestic or internationally) that show material progress toward quality measurement enabled by health IT.

Reference Material

Anderson KM, Marsh CA, Isenstein H, Flemming AC, Reynolds J. An Environmental Snapshot: Health IT-enabled Quality Measurement: Efforts, Challenges, and Possibilities (Prepared by Booz Allen Hamilton, under Contract No. HHS290200900024I.) AHRQ Publication No. 12-0061-EF. Rockville, MD: Agency for Healthcare Research and Quality. July 2012. See: <http://healthit.AHRQ.gov/HealthITEnabledQualityMeasurement/Snapshot.pdf>

Dated: August 15, 2012.

Carolyn M. Clancy,
AHRQ Director.

[FR Doc. 2012-20550 Filed 8-21-12; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-12-12PS]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of the Get Yourself Tested (GYT) Campaign—New—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this data collection is to evaluate the reach and impact of the *Get Yourself Tested (GYT)* campaign. The campaign is aimed at young people (ages 15–25) and its goal is to encourage STD testing, conversation about sexual health, and awareness of Sexually Transmitted Diseases, (STDs) and Human Immunodeficiency Virus (HIV). Evaluation of *GYT* will be based on data collected from 4,000 young adults including minority youth. The number of participants is based on the need to represent all categories of race/ethnicity, sex, age, and geographic region in the survey sample. In order to ensure a valid statistical comparison between even the smallest subsamples of the data, the sample size needs to have approximately 80 youth from each of the 50 states. The data will represent the nation's youth ages 15–25. The data will be collected through a 30-minute, web-based survey. The survey is 30 minutes long because of the complex set of behaviors we are trying to measure; also, data from past surveys indicate that 30 minutes is the most we can expect youth to devote to surveys on this topic. Data from the survey will then be quantitatively (and in rare instances, qualitatively) evaluated.

Collection of this information will allow CDC to (1) evaluate whether the *GYT* campaign is reaching the appropriate target audience; (2) identify

messages the audience is taking away from *GYT*; (3) determine whether individuals who saw the campaign are more likely to engage in target behaviors and their mediators; and (4) determine whether perceived norms around testing, treatment, and sexual health vary between people who have seen the campaign and those who have not. The information obtained from the proposed data collection will be used by CDC to decide whether to improve, update and continue the *GYT* campaign and to determine whether *GYT* is able or unable to impact norms and behaviors related to STD testing. It will also be used to inform future efforts to communicate with the public about STD/HIV testing.

Because the *GYT* campaign targets populations with higher rates of STD/HIV than the general population, it is essential to examine the effectiveness of this communication to determine whether youth receive the message. Evidence-based criteria established by the *GYT* evaluation will guide the campaign's future. "Additionally, this effort will enhance STD/HIV communication with the public as well as service providers."

CDC, the National Association of City and County Health Officials (NACCHO) and Knowledge Networks will disseminate the study results to the public through reports prepared for or by CDC, NACCHO and Knowledge Networks and through peer-reviewed journal articles and related presentations. All releases of information will be reviewed and approved by CDC and partner organizations involved with *GYT*.

There is no cost to participants only their time only.

ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden in hours
Young adults and minority youth	Web-based survey	4000	1	30/60	2000
		4000	.....	.....	2000

Dated: August 16, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012-20673 Filed 8-21-12; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention**

[30Day–12–12HN]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of U.S. Family Planning Guidelines-Phase II—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention's (CDC) Division of Reproductive Health (DRH), in collaboration with the Office of Population Affairs (OPA), plans to

conduct an evaluation of the diffusion, utilization of, and impact on provider- and health center-level attitudes and practices of three national guidance documents intended to improve contraceptive use and the delivery of quality family planning services in the United States. The purpose of this information collection is to evaluate the adoption and implementation of recommendations included in the *U.S. Medical Eligibility Criteria for Contraceptive Use*, approximately two and a half years after its release, and to collect baseline information on selected attitudes and practices that will be addressed in the forthcoming *U.S. Selected Practice Recommendations for Contraceptive Use (U.S. SPR)* and the forthcoming *Guidance for Providing Quality Family Planning Services (QFPS)*. The information to be collected will also allow CDC and OPA to improve family planning-related public health practice, as CDC and OPA will tailor future dissemination activities, and develop needed provider tools, based upon the results. CDC and OPA will consider conducting a follow-up information collection approximately three years after the release of the forthcoming *U.S. SPR and QFPS*.

CDC and OPA will administer a mailed survey to 10,000 private- and public-sector family planning providers and health center administrators in the United States, including: (a) 2,000 private-sector office-based physicians (i.e., those specializing in obstetrics/gynecology, family medicine, and

adolescent medicine); (b) 2,000 public-sector providers from Title X clinics; (c) 2,000 public-sector providers from non-Title X clinics; (d) 2,000 public-sector health center administrators from Title X clinics; and (e) 2,000 public-sector health center administrators from non-Title X clinics. Private-sector physicians will be sampled from the American Medical Association Physician Masterfile. Public-sector providers and health center administrators will be reached by sampling health centers from the Guttmacher Institute Database of Publicly-Funded Family Planning Health Centers.

Each sampled physician and health center will receive a mailed survey package. For private-sector physicians, each mailed survey package will include a single survey to be completed by the physician. For public-sector health centers, each mailed survey package will include two surveys—one to be completed by a family planning provider at the health center, and the second to be completed by the health center administrator. Each survey will be accompanied by a postage-paid return envelope. Individuals will also be given the option to complete the survey online via a password protected web-based data collection system. Participation in the survey will be completely voluntary. OMB approval is requested for one year.

There are no costs to respondents other than their time. The total estimated burden hours are 4,166.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Office-based physicians (private sector)	2012–2012 Survey of Health Care Providers	2,000	1	15/60
Title X clinic providers (public sector)	2012–2012 Survey of Health Care Providers	2,000	1	15/60
Non-Title X clinic providers (public sector)	2012–2012 Survey of Health Care Providers	2,000	1	15/60
Title X clinic administrators (public sector)	2012–2013 Survey of Administrators of Publicly-Funded Health Centers that Provide Family Planning Services.	2,000	1	40/60
Non-Title X clinic administrators (public sector).	2012–2013 Survey of Administrators of Publicly-Funded Health Centers that Provide Family Planning Services.	2,000	1	40/60

Dated: August 16, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–20620 Filed 8–21–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-12-12QU]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-7570 and send comments to Kimberly S. Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

Impact Evaluation of CDC's Colorectal Cancer Control Program (CRCCP)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Colorectal cancer (CRC) is the second leading cause of cancer deaths in the U.S., however, screening can effectively reduce CRC incidence and mortality. CDC's Colorectal Cancer Control Program (CRCCP) was established to increase population-level screening rates to 80 percent. Currently, 25 states and four tribal organizations receive CDC funds. The CRCCP is the first cancer prevention and control program funded by CDC emphasizing both the direct provision of screening services and broader screening promotion. CRCCP grantees are required to establish evidence-based colorectal cancer screening delivery programs for persons 50-64 years of age, focusing on asymptomatic persons at average risk for CRC with low incomes and inadequate or no health insurance coverage for CRC screening. Approximately 33 percent of each grantee award may be used to fund the provision of screening and diagnostic tests. Additional program activities such as patient recruitment, patient navigation, provider education, quality assurance, and data management are also supported under this component of the program.

The CRCCP offers a unique and important opportunity to evaluate the efficacy of this new public health model. CDC plans to conduct an impact evaluation to determine whether CRCCP program activities increase state-level colorectal cancer screening rates and other proximal outcomes. The impact evaluation will use a quasi-experimental, control group design with pre- and post-tests involving a total of six states: Three CRCCP grantee states (Alabama, Nebraska, and Washington) represent the intervention programs and three non-CRCCP states (Tennessee, Oklahoma, and Wisconsin) represent the control states.

CDC plans to complete two cycles of information collection over a three-year period. The first information collection will be initiated in 2012 and the second information collection will be initiated in 2014. Three types of information will be collected at each time, including: (1)

A general population survey administered by telephone with a state-based, representative, cross-sectional, random sample of adults aged 50-75 (population survey); (2) a mail-back, written, survey of a state-based, representative sample of primary care providers (provider survey); and (3) qualitative case studies of program implementation (case studies) based on interviews with Colorectal Control Program staff, program evaluators, and state and local partners in both grantee and non-grantee states.

The general population survey includes questions related to knowledge of and attitudes toward colorectal cancer, history of colorectal cancer screening and intentions for future screening, and barriers to screening. The estimated burden per response is 23 minutes. The provider survey of primary care physicians includes questions related to knowledge of colorectal cancer screening guidelines and screening quality, office systems that support screening, and patterns of referrals to screening. The estimated burden per response is 12 minutes. For the case studies, interview guides will be used to conduct personal interviews with program staff and stakeholder to gather detailed information about colorectal cancer screening provision and promotion efforts. The estimated burden for each interview is one hour, although some interviews may be longer. Evaluation staff will also collect information through document review and field observation.

The information to be collected will be used to assess the impact of the CRCCP in improving proximal outcomes (e.g., provider knowledge, population attitudes) and in increasing population-level CRC screening rates. Results of the evaluation will be used to improve program performance, plan future public health programs, and improve efficiencies. OMB approval is requested for three years. The total estimated annualized burden hours are 2,393. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
General Population	Screener for the Colorectal Cancer Population Survey.	9,600	1	5/60	800
General Population ages 50-75	Colorectal Cancer Population Survey	3,200	1	23/60	1,227
Eligible Primary Care Providers	Colorectal Cancer Screening Practices: Survey of Primary Care Providers.	1,600	1	12/60	320
CRCCP Grantee Program Staff	Interview Guide: Program Staff for Grantee Program.	10	1	1.5	15

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
CRCCP Grantee Evaluators	Interview Guide: Program Evaluator for Grantee Program.	2	1	1	2
Non-Grantee Program Staff	Interview Guide: Program Staff for Non-grantee Program.	10	1	1.5	15
Non-Grantee Evaluator	Interview Guide: Program Evaluator for Nongrantee Program.	2	1	1	2
CRCCP State and Local Sector Partners.	Interview Guide: Grantee Partner for Grantee Program.	4	1	1	4
Non-grantee State and Local Partners.	Interview Guide: Nongrantee Partner	4	1	1	4
CRCCP Private Sector Partners.	Interview Guide: Grantee Partner for Grantee Program.	4	1	1	4
Non-grantee Private Sector Partners.	Interview Guide: Nongrantee Partner	4	1	1	4
Total .....	.....	.....	.....	.....	2,393

Dated: August 16, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012-20619 Filed 8-21-12; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-12-0696]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

National HIV Prevention Program Monitoring and Evaluation (NHM&E) (OMB 0920-0696, Expiration 08/31/2013)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting a 3-year approval for revision to the previously approved project.

The purpose of this revision is to continue collecting standardized HIV prevention program evaluation data from health departments and community-based organizations (CBOs) who receive federal funds for HIV prevention activities. Grantees have the option of key-entering or uploading data to a CDC-provided Web-based software application (EvaluationWeb®).

The following changes have occurred since project 0920-0696 has been implemented: (1) The previous reporting system (PEMS) has been replaced by a more efficient reporting software. (2) Many data variables that were previously required or optional but reported have been deleted in order to reduce data reporting burden on grantees. Other variables have been added or modified to adapt to changes in HIV prevention and the National HIV/AIDS Strategic Plan. (3) Reporting

has been changed from quarterly to semiannual. (4) The number of grantees has changed as new FOAs were awarded.

The evaluation and reporting process is necessary to ensure that CDC receives standardized, accurate, thorough evaluation data from both health department and CBO grantees. For these reasons, CDC developed standardized NHM&E variables through extensive consultation with representatives from health departments, CBOs, and national partners (e.g., The National Alliance of State and Territorial AIDS Directors, Urban Coalition of HIV/AIDS Prevention Services, and National Minority AIDS Council).

CDC requires CBOs and health departments who receive federal funds for HIV prevention to report non-identifying, client-level and aggregate-level, standardized evaluation data to: (1) Accurately determine the extent to which HIV prevention efforts are carried out, what types of agencies are providing services, what resources are allocated to those services, to whom services are being provided, and how these efforts have contributed to a reduction in HIV transmission; (2) improve ease of reporting to better meet these data needs; and (3) be accountable to stakeholders by informing them of HIV prevention activities and use of funds in HIV prevention nationwide.

CDC HIV prevention program grantees will collect, enter or upload, and report agency-identifying information, budget data, intervention information, and client demographics and behavioral risk characteristics with an estimate of 200,846 burden hours. Data collection will include searching existing data sources, gathering and maintaining data, document compilation, review of data,

and data entry or upload into the Web-based system.

There are no additional costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Health jurisdictions	Agency Data	69	2	9	1,242
Health jurisdictions	HE/RR Data	69	2	67	9,246
Health jurisdictions	HIV Testing Data	69	2	1,229	169,602
Health jurisdictions	Partner Services Data	69	2	52	7,176
Health jurisdictions	NHM&E Data Training	69	2	20	2,760
Community-Based Organizations	Agency Data	200	2	30/60	200
Community-Based Organizations	HE/RR Data	200	2	20	8,000
Community-Based Organizations	NHM&E Data Training	200	2	20	8,000
Total					206,226

Dated: August 16, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012-20681 Filed 8-21-12; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-12-0819]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

Nationally Notifiable Sexually Transmitted Disease (STD) Morbidity Surveillance (OMB No.0920-0819, Expiration (08/31/2012)—Extension—Division of STD Prevention (DSTDP), National Center for HIV, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Because the STD epidemiology in the United States is changing rapidly, CDC must continue to monitor disease indicators that are included in the STD surveillance currently being implemented. CDC is proposing to continue electronic information collection which includes information elements that are integrated into the existing nationally notifiable STDs. These information elements are beyond the scope of the OMB-approved collection called Weekly and Annual Morbidity and Mortality Reports (MMWR, OMB #0920-0007). This ongoing collection provides evidence to better define STD distribution and epidemiology in the United States. The surveillance system modifies several data elements currently included in the

Morbidity and Mortality Weekly Report (MMWR) collection and add others to produce a set of sensitive indicators. This surveillance will continue to provide the evidence to enhance our understanding of STDs, develop intervention strategies, and evaluate the impact of ongoing control efforts.

CDC works closely with state and local STD control programs to monitor and respond to STD outbreaks and trends in STD-associated risk behavior. Users of data include, but are not limited to, congressional offices, state and local health agencies, health care providers, and other health-related groups.

CDC disseminates all STD surveillance information through the MMWR series of publications, including the MMWR, the CDC Surveillance Summaries, the Recommendations and Reports, and the annual Summary of Notifiable Diseases, United States. Additionally, the Division of STD Prevention publishes an annual STD-specific surveillance summary and supplements in hard copy and on the Internet <http://www.cdc.gov/std/Stats/>.

CDC will use the findings from this and other STD surveillance to develop guidelines, control strategies, and impact measures that monitor trends in STDs in the United States.

We expect a total of 57 sites in state, city, and territory health departments will be submitting STD morbidity information to CDC each week.

There is no cost to respondents other than their time. The total estimated annualized burden hours are 989.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Types of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State Health Departments	Electronic STD Case report	50	52	20/60	867
Territorial Health Agencies	Electronic STD Case report	5	52	20/60	87
City and county health departments	Electronic STD Case report	2	52	20/60	35
Totals .....	.....	.....	.....	.....	989

Dated: August 16, 2012.

Ron A. Otten,

Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012-20675 Filed 8-21-12; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: New Collection]

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Support Document Exchange System (CSDES).

Description: The federal Office of Child Support Enforcement (OCSE) is implementing a new application, the Child Support Document Exchange System (CSDES), within the Federal Parent Locator Service (FPLS) Child Support Services Portal (CSSP). The CSDES will collect and maintain certain child and spousal support case-related records provided by a state IV-D child support agency to facilitate the dissemination of IV-D child and spousal support information to authorized users acting on behalf of a state IV-D child support agency. 42 U.S.C. 666(c)(1)(A)(B)(C) and (D) and 42 U.S.C. 653(a)(1).

The purpose of the information collection is to provide technical assistance to the states to help them establish effective systems for collecting child and spousal support. 42 U.S.C.

652(a)(7). This will help state IV-D agencies in fulfilling the federal requirement to transmit requests for child support case information and provide requested information electronically to the greatest extent possible. 45 CFR 303.7(a)(5).

It is anticipated that the implementation of the CSDES will reduce delays, costs, and barriers associated with interstate case processing; increase state collections; improve document security; standardize data sharing; and increase state participation; thereby improving overall child and spousal support outcomes.

Respondents: State Child Support Agencies

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Data Entry Screens	54	4,272	.01667	3,845

Estimated Total Annual Burden Hours: 3,845.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments 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: ACF Reports Clearance Officer. Email address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012-20565 Filed 8-21-12; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0564]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Dietary Supplement Labeling Requirements and Recommendations Under the Dietary Supplement and Nonprescription Drug Consumer Protection Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the

Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 21, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910-0642. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400T, Rockville, MD 20850, 301-796-5733, *domini.bean@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Dietary Supplement Labeling Requirements and Recommendations Under the Dietary Supplement and Nonprescription Drug Consumer Protection Act—(OMB Control Number 0910-0642)—Extension

In 2006, the Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA) (Pub. L. 109-462, 120 Stat. 3469) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application. The DSNDCPA also amended the FD&C Act to add section 403(y) (21 U.S.C. 343(y)), which requires the label of a dietary supplement marketed in the United States to include a domestic address or domestic telephone number through which the product's manufacturer, packer or distributor may receive a report of a serious adverse event associated with the dietary supplement.

In the **Federal Register** of September 1, 2009 (74 FR 45221), FDA announced the availability of a guidance document entitled, "Guidance for Industry:

Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act." The guidance document contains questions and answers related to the labeling requirements in section 403(y) of the FD&C Act and provides guidance to industry on the use of an explanatory statement before the domestic address or telephone number. The guidance document provides the Agency's interpretation of the labeling requirements for section 403(y) of the FD&C Act and the Agency's views on the information that should be included on the label. The Agency believes that the guidance will enable persons to meet the criteria for labeling that are established in section 403(y) of the FD&C Act.

In the **Federal Register** of June 14, 2012 (77 FR 35687), FDA published a 60-day notice requesting public comment on the proposed collection of information. The Agency received no comments in response to the notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN ¹

Activity	Number of respondents	Number of disclosures per respondent ²	Total annual disclosures	Average burden per disclosure	Total hours
Domestic address or phone number labeling requirement (21 U.S.C. 343(y))	1,460	3.8	5,560	0.2	1,112
FDA recommendation for label statement explaining purpose of domestic address or phone number	1,460	3.8	5,560	0.2	1,112
Total .....	.....	.....	.....	.....	2,224

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² Number has been rounded to the nearest tenth.

The labeling requirements of section 403(y) of the FD&C Act became effective on December 22, 2007, although FDA exercised enforcement discretion until September 30, 2010, to enable all firms to meet the labeling requirements for dietary supplements. FDA estimates that all labels required to include the domestic address or telephone number pursuant to section 403(y) of the FD&C Act have been revised by the effective date. Thus, in succeeding years, the Agency estimates that the burden hours associated with the labeling requirements of section 403(y) of the FD&C Act and the Agency's recommendations on the use of an explanatory statement will apply only to new product labels. Based on the A.C. Nielsen Sales Scanner Data, FDA estimated that the number of dietary supplement stock keeping units for

which sales of the products are greater than zero is 55,600. Assuming that the flow of new products is 10 percent per year, then 5,560 new dietary supplement products will come on the market each year. FDA also estimates that there are about 1,460 dietary supplement manufacturers, re-packagers, re-labelers, and holders of dietary supplements. Assuming the approximately 5,560 new products are split equally among the firms, then each firm would prepare labels for close to four new products per year (5,560 new products/1,460 firms is approximately 3.8 labels per firm. Thus, the estimated total annual disclosures are 5,560 (1,460 firms × 3.8 labels per year = 5,560).

The Agency expects that firms prepare the required labeling for their products in a manner that takes into account at one time all information

required to be disclosed on their product labels. Based upon its knowledge of food and dietary supplement labeling, FDA estimates that firms would require less than 0.2 hours per product to comply with the requirement to include the domestic address or telephone number pursuant to section 403(y) of the FD&C Act. The total hour burden of this task is shown in row 1 of table 1.

FDA estimates that all firms will include an explanatory statement on the label, which lets consumers know the purpose of the domestic address or telephone number on the label of the dietary supplement product. Based upon its knowledge of food and dietary supplement labeling, FDA estimates that firms would require less than 0.2 hour per product to comply with the use Agency's recommendations on the use

of an explanatory statement. The total hour burden of this task is shown in row 2 of table 1.

The total reporting hour burden is 2,224 hours, which equals the burden for the required domestic address or telephone (1,112 hours) plus the burden for the explanatory statement before the domestic address or telephone number (1,112 hours). This estimate is 3,336 hours lower than the 5,560 hours reported in the 60-day notice published June 14, 2012, due to an Agency reassessment that 0.2 hours per disclosure more accurately reflects the burden. This reassessment is based on the Agency's expectation that firms, estimated to design four new labels per year, are familiar with the requirement to include the domestic address or telephone number in their product labels. It is also based on FDA's recommendations on the use of an explanatory statement and our expectation that the disclosed information (domestic address or telephone number and explanatory statement) would not change from product label to product label. Thus, FDA estimates that firms would not need a full hour per label, but rather, approximately 24 minutes per label to include this information.

Dated: August 16, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012-20602 Filed 8-21-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0001]

Gastrointestinal 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: Gastrointestinal 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 October 16, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building

31 Conference Center, the Great Room (rm. 1503), 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: Cindy Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, FAX: 301-847-8533, email: GIDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. 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 at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the safety and efficacy of new drug application (NDA) 203441, with the proposed trade name GATTEX (teduglutide) for subcutaneous injection, by NPS Pharmaceuticals, Inc, for the proposed indication of treatment of adult patients with short bowel syndrome.

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 meeting 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 September 28, 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 September 20, 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 September 21, 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 Cindy Hong 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: August 17, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012-20612 Filed 8-21-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0001]

Radiological Devices Panel of the Medical Devices 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: Radiological Devices Panel of the Medical Devices 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 October 24, 2012, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301-977-8900.

Contact Person: Shanika Craig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1613, Silver Spring, MD 20993, Shanika.Craig@fda.hhs.gov, 301-796-6639, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. 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 at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On October 24, 2012, the committee will discuss, make recommendations, and vote on a premarket approval application supplement to expand the indications for use of the Selenia Dimensions 3D System with C-View Software Module, sponsored by Hologic, Inc.

The Selenia Dimensions 3D System is currently approved for breast cancer screening and diagnosis. The screening exam can consist of field digital mammography (FFDM) alone or the combination of FFDM with digital breast tomosynthesis (DBT).

The new C-View Software Module can generate synthetic 2D images from the DBT data. Hologic requests to expand the indications for use to allow the combination of DBT with synthetic 2D images to be used as another exam option for breast cancer screening.

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 meeting 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 October 15, 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 October 5, 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 October 9, 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 James Clark, Conference Management Staff, at James.Clark@fda.hhs.gov or 301-796-5293, 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: August 17, 2012.

Jill Hartzler Warner,
Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012-20608 Filed 8-21-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration

[Docket No. FDA-2012-N-0001]

Cardiovascular and Renal Drugs Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Cardiovascular and Renal Drugs Advisory Committee scheduled for September 14, 2012, is cancelled. The meeting is no longer needed. This meeting was announced in the **Federal Register** of July 23, 2012 (77 FR 43093).

FOR FURTHER INFORMATION CONTACT:

Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, FAX: 301-847-8533, email: CRDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information or visit our Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm>.

Dated: August 17, 2012.

Jill Hartzler Warner,
Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012-20607 Filed 8-21-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration

[Docket No. FDA-2012-N-0839]

Ranbaxy Laboratories Limited; Withdrawal of Approval of 27 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 27 abbreviated new drug applications (ANDAs) held by Ranbaxy Laboratories Ltd., c/o Ranbaxy Inc. (Ranbaxy), 600 College Rd. East, Princeton, NJ 08540. The drug products are no longer marketed, and Ranbaxy has requested that the approval of the applications be withdrawn.

DATES: *Effective date:* September 21, 2012.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6366, Silver Spring, MD 20993-0002, 301-796-3601.

SUPPLEMENTARY INFORMATION: The drug products listed in table 1 in this document are no longer marketed, and Ranbaxy has requested that FDA withdraw approval of the applications.

The company has also waived its opportunity for a hearing. Ranbaxy requested withdrawal of approval under a Consent Decree of Permanent Injunction (Decree) entered in *United States v. Ranbaxy Laboratories, Ltd. et al.*, JFM 12-250 (D. Md.) on January 26, 2012. The Decree specifies that Ranbaxy must never submit another application to FDA for these withdrawn drug products and must never transfer these ANDAs to a third party.

TABLE 1

Application No.	Drug
064155	Cefaclor for Oral Suspension USP, 375 milligrams (mg)/5 milliliters (mL).
064156	Cefaclor Capsules USP, 250 mg and 500 mg.
064164	Cefaclor for Oral Suspension USP, 250 mg/5 mL.
064165	Cefaclor for Oral Suspension USP, 187 mg/5 mL.
064166	Cefaclor for Oral Suspension USP, 125 mg/5 mL.
065015	Cefadroxil Capsules USP, 500 mg.
065018	Cefadroxil Tablets USP, 1 gram.
065043	Cefuroxime Axetil Tablets USP, 125 mg, 250 mg, and 500 mg.
065080	Dispermox (amoxicillin tablets for oral suspension USP), 200 mg and 400 mg.
065092	Raniclor (cefaclor chewable tablets USP), 125 mg, 187 mg, 250 mg, and 375 mg.
065100	Panixine Disperdose (cephalexin tablets for oral suspension USP), 125 mg and 250 mg.
065159	Dispermox (amoxicillin tablets for oral suspension USP), 600 mg.
065198	Cefprozil Tablets USP, 250 mg and 500 mg.
065202	Cefprozil for Oral Suspension USP, 125 mg/5 mL and 250 mg/5 mL.
075226	Etodolac Tablets USP, 400 mg and 500 mg.
076021	Terazosin Hydrochloride (HCl) Capsules, 1 mg, 2 mg, 5 mg, and 10 mg.
076220	Ofloxacin Tablets, 200 mg, 300 mg, and 400 mg.
076386	Fluconazole Tablets, 50 mg, 100 mg, 150 mg, and 200 mg.
076413	Metformin HCl Extended-Release Tablets USP, 500 mg.
076445	Pravastatin Sodium Tablets USP, 10 mg, 20 mg, 40 mg, and 80 mg.
076457	Ganciclovir Capsules, 250 mg and 500 mg.
076580	Fosinopril Sodium Tablets USP, 10 mg, 20 mg, and 40 mg.
076875	Glimepiride Tablets USP, 1 mg, 2 mg, 4 mg, and 8 mg.
076951	Nitrofurantoin/Nitrofurantoin Macrocrystalline Capsules, 75 mg/25 mg.
077211	Metformin HCl Extended-Release Tablets USP, 750 mg.
077327	Zidovudine Tablets USP, 300 mg.
078849	Ramipril Capsules, 5 mg and 10 mg.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner, approval of the applications listed in table 1 in this document, and all amendments and supplements thereto, is hereby withdrawn, effective September 21, 2012. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the FD&C Act (21 U.S.C. 331(a) and (d)).

Dated: August 15, 2012.

Douglas C. Throckmorton,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 2012-20588 Filed 8-21-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Dermatology and Rheumatology.

Date: September 19, 2012.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301-435-6809, beheraak@csr.nih.gov.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: September 20-21, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge

Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301-806-8065, lijames@csr.nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies A Study Section.

Date: September 20–21, 2012.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435-1712, ryansj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Obesity and Perinatology.

Date: September 20, 2012.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Krish Krishnan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435-1041, krishnak@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: September 20–21, 2012.

Time: 11:00 a.m. to 10:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Donald L Schneider, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435-1727, schneidd@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Gastrointestinal and Hepatic Physiology/Pathophysiology.

Date: September 21, 2012.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301-435-1169, greenwep@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; MOSS Shared Instrumentation.

Date: September 21, 2012.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301-496-8551, ingrahamrh@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 16, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-20606 Filed 8-21-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: September 18–19, 2012.

Closed: September 18, 2012, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Open: September 19, 2012, 8:00 a.m. to 1:15 p.m.

Agenda: Call to order and reports from the Director; discussion of future meeting dates;

consideration of minutes from the last meeting; reports from the Task Force on Minority Aging Research, the Council of Councils, the Working Group on Program; council speaker; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robin Barr, Ph.D., Director, National Institute On Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496-9322, barr@nia.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nih.gov/nia/naca/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 16, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-20605 Filed 8-21-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Drug Development for Alzheimer's Disease.

Date: September 13, 2012.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadonian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301-496-9666, PARSADANIANA@NIA.NIH.GOV.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and Compensatory Immune Mechanisms.

Date: September 24, 2012.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301-402-7703, ferrellrj@mail.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 16, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-20604 Filed 8-21-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee (IACC) Subcommittee for Basic and Translational Research.

The IACC Subcommittee for Basic and Translational Research will be having a conference call on Friday, September 7, 2012. The Subcommittee will discuss plans for developing a 2012 IACC Strategic Plan Progress Update that will describe recent progress that has been made in the autism field as well as remaining gap areas in research. The meeting will be open to the public and accessible by webinar and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Subcommittee for Basic and Translational Research.

Date: September 7, 2012.

Time: 10:00 a.m. to 2:00 p.m. Eastern Time.

Agenda: The Subcommittee will discuss plans for developing a 2012 IACC Strategic Plan Progress Update that will describe recent progress that has been made in the autism field and identify remaining gap areas in research.

Webinar: <https://www2.gotomeeting.com/register/960182738>.

Conference Call: Dial: 800-369-3130, Access code: 1524980.

Cost: The conference call and webinar is free.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 6182A, Rockville, MD 20852, Phone: 301-443-6040, Email: IACCPublicInquiries@mail.nih.gov.

Please Note: The meeting will be accessible via a webinar and conference call. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the conference call, please email IACCTechSupport@acclaroresearch.com or call the IACC Technical Support Help Line at 443-680-0098.

If you experience any technical problems with the web presentation tool, please contact GoToWebinar at (800) 263-6317. To access the web presentation tool on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

Individuals who participate by using this electronic service and who need special assistance such as captioning or other reasonable accommodations should submit a request to the Contact Person listed on this notice at least 5 days prior to the meeting. Schedule is subject to change.

Information about the IACC and a registration link for this meeting are available on the Web site: www.iacc.hhs.gov.

Dated: August 14, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-20561 Filed 8-21-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, NIDCD P30 Review Meeting.

Date: September 13, 2012.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders National Institutes of Health Rockville, MD 20850, 301-402-3587, rayk@nidcd.nih.gov.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, P50 Application Review.

Date: September 19, 2012.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd. Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301-496-8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, NIDCD Clinical Trial and Translational Research Application Review.

Date: September 28, 2012.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852.

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120

Executive Blvd., Bethesda, MD 20892, 301-496-8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, T32 & T35 Research Training Grants.

Date: October 4, 2012.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Sheo Singh, Ph.D. Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301-496-8683, singhs@nidcd.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 16, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-20603 Filed 8-21-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2012-0012]

National Flood Insurance Program Programmatic Environmental Impact Statement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is issuing this notice to advise the public that FEMA is reopening the comment period for Docket ID FEMA-2012-0012. The initial Notice of Intent to prepare an Environmental Impact Statement published in the May 16, 2012 **Federal Register**, and requested public comments no later than July 16, 2012. FEMA has reopened the comment period for submitting public comments to October 9, 2012. All substantive comments on the Notice of Intent received during the public comment period will become part of the scoping record.

DATES: Comments submitted regarding the May 16, 2012 Notice of Intent must be received by October 9, 2012.

ADDRESSES: Comments must be identified by Docket ID FEMA-2012-0012 and may be submitted by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Please note that this notice is not a rulemaking and that the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulatory Affairs Legal Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472-3100.

FOR FURTHER INFORMATION CONTACT: Emily Blanton, Federal Emergency Management Agency, Office of Environmental Planning and Historic Preservation, 1800 S. Bell Street, 7th Floor, Arlington, VA 20598-3020. Phone: (202) 646-2585. Fax: (202) 646-4033.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is issuing this notice to advise the public that FEMA is reopening the comment period for Docket ID FEMA-2012-0012. The initial Notice of Intent to prepare an Environmental Impact Statement was published in the May 16, 2012 **Federal Register** at 77 FR 28891, and requested public comments no later than July 16, 2012.

Due to the extenuating circumstances caused by the passage of a 5-year National Flood Insurance Program reauthorization (See Biggert-Waters Flood Insurance Reform Act of 2012, Pub. L. 112-141, 126 Stat. 405), interested parties have requested an extension of the comment period. FEMA has reopened the comment period for submitting public comments to October 9, 2012. All substantive comments on the Notice of Intent received during the public comment period will become part of the scoping record.

Dated: August 14, 2012.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012-20618 Filed 8-21-12; 8:45 am]

BILLING CODE 9111-A6-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4076-DR; Docket ID FEMA-2012-0002]

Wisconsin; 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 Wisconsin (FEMA-4076-DR), dated August 2, 2012 and related determinations.

DATES: *Effective Date:* August 2, 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 August 2, 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 Wisconsin resulting from severe storms and flooding during the period of June 19-20, 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 Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kari Suzann Cowie, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Wisconsin have been designated as adversely affected by this major disaster:

Ashland, Bayfield, and Douglas Counties and the Red Cliff Band of Lake Superior Chippewa for Public Assistance.

All counties and Indian Tribes in within the State of Wisconsin 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. 2012–20614 Filed 8–21–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4073–DR; Docket ID FEMA–2012–0002]

District of Columbia; 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 District of Columbia (FEMA–4073–DR), dated July 31, 2012, and related determinations.

DATES: *Effective Date:* July 31, 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 July 31, 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 the District of Columbia resulting from severe storms during the period of June 29 to July 1, 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 District of Columbia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the District of Columbia. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael J. Lapinski, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the District of Columbia have been designated as adversely affected by this major disaster:

The District of Columbia for Public Assistance.

The District of Columbia is 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. 2012–20653 Filed 8–21–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4075–DR; Docket ID FEMA–2012–0002]

Maryland; 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 Maryland (FEMA–4075–DR), dated August 2, 2012, and related determinations.

DATES: *Effective Date:* August 2, 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 August 2, 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 Maryland resulting from severe storms and straight-line winds during the period of June 29 to July 8, 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 Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maryland have been designated as adversely affected by this major disaster:

Calvert, Charles, Kent, Montgomery, and St. Mary’s Counties and the Independent City of Baltimore for Public Assistance.

All counties and the independent City of Baltimore in the State of Maryland 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. 2012-20649 Filed 8-21-12; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4074-DR; Docket ID FEMA-2012-0002]

Montana; 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 Montana (FEMA-4074-DR), dated August 2, 2012, and related determinations.

DATES: *Effective Date:* August 2, 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 August 2, 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 Montana resulting from a wildfire during the period of June 25 to July 10, 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 Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and

Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Montana have been designated as adversely affected by this major disaster:

Powder River and Rosebud Counties and the Northern Cheyenne Indian Reservation for Public Assistance.

All counties and Indian Tribes in the State of Montana 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. 2012-20616 Filed 8-21-12; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4072-DR; Docket ID FEMA-2012-0002]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the

Commonwealth of Virginia (FEMA-4072-DR), dated July 27, 2012, and related determinations.

DATES: *Effective Date:* August 14, 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 Virginia 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 27, 2012.

The counties of Franklin, Montgomery, Smyth, and Stafford and the independent cities of Buena Vista, Falls Church, and Harrisonburg 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. 2012-20617 Filed 8-21-12; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4067-DR; Docket ID FEMA-2012-0002]

Colorado; 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 State of Colorado (FEMA-4067-DR), dated June 28, 2012, and related determinations.

DATES: *Effective Date:* August 8, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael F. Byrne as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012-20615 Filed 8-21-12; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA-2012-0003; Internal Agency Docket No. FEMA-B-1263]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood

Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before November 20, 2012.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at www.msc.fema.gov for comparison.

You may submit comments, identified by Docket No. FEMA-B-1263, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) Luis.Rodriguez3@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) Luis.Rodriguez3@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at www.floodmaps.fema.gov/fhm/fmx_main.html.

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

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

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at www.msc.fema.gov for comparison.

Community	Community map repository address
Lee County, Mississippi, and Incorporated Areas	
Maps Available for Inspection Online at: http://geology.deq.ms.gov/floodmaps/Projects/FY2009/?county=Lee	
City of Tupelo	City Hall, Planning Department, 71 East Troy Street, Tupelo, MS 38804.
City of Saltillo	142 Front Avenue, Saltillo, MS 38866.
Town of Verona	City Hall, 194 Main Street, Verona, MS 38879.
Unincorporated Areas of Lee County	Lee County Courthouse, 201 West Jefferson Street, Suite A, Tupelo, MS 38801.

Sheridan County, Wyoming, and Incorporated Areas	
Maps Available for Inspection Online at: http://www.bakeraecom.com/index.php/wyoming/sheridan-3/	
City of Sheridan	Department of Public Works, 55 Grinnell Plaza, 3rd Floor, Sheridan, WY 82801.
Town of Clearmont	Sheridan County Public Works Office (Planning and Engineering), 224 South Main Street, Suite B8, Sheridan, WY 82801.
Unincorporated Areas of Sheridan County	Sheridan County Public Works Office (Planning and Engineering), 224 South Main Street, Suite B8, Sheridan, WY 82801.

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

Dated: August 8, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012-20633 Filed 8-21-12; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Employment Eligibility Verification, Form I-9, OMB Control No. 1615-0047; Revision of an Existing Information Collection, Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Employment Eligibility Verification, Form I-9.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 27, 2012, at 77 FR 18256, allowing for a 60-day public comment period. USCIS received over 6,200 comments in connection with that publication.

The purpose of this notice is to allow an additional 30 days for public

comments. Comments are encouraged and will be accepted until September 21, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions regarding items contained in this information collection notice, and especially, with regard to the estimated public burden and associated response time should be directed to the DHS, USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529. Comments may be submitted to DHS via email at uscisfrcomment@dhs.gov and must include OMB Control Number 1615-0047 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at <http://www.regulations.gov> under e-Docket ID number USCIS-2006-0068.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

When submitting comments by email please make sure to add OMB Control Number 1615-0047 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-9. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Employers, employees, recruiters and referrers for a fee (limited to agricultural associations, agricultural employers, or farm labor contractors), and state employment agencies. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. This information collection is necessary for employers, agricultural recruiters and referrers for a fee, and state employment agencies to verify the identity and employment authorization of individuals hired (or recruited or referred for a fee, if applicable) for employment in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This figure was derived by multiplying the number of employers, recruiters and referrers for a fee (limited to agricultural associations, agricultural employers, or farm labor contractors), and state employment agencies (78,000,000) × frequency of response (1) × .33 hours (20 minutes) per response and the number of employees (78,000,000) × frequency of response (1) × .17 hours (10 minutes) per response. The annual record keeping burden is added to the total annual reporting burden which is based on 20,000,000 record keepers at .08 hours (5 minutes) per filing.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,600,000 annual burden hours.

If you need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal Web site at: <http://www.regulations.gov/search/index.jsp>.

If additional information is required contact: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue, Washington, DC 20529, (202) 272-1470.

Dated: August 17, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012-20631 Filed 8-21-12; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5603-N-57]

Notice of Proposed Information Collection for Public Comment: Pre-Purchase Homeownership Counseling Demonstration and Impact Evaluation

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This request is for the clearance of data collection instruments designed to collect the information necessary to conduct a random assignment evaluation of pre-purchase homeownership counseling. The evaluation will produce valuable information about the impact of pre-purchase homeownership counseling on a range of outcomes for low- to moderate-income, first-time home buyers. This is the first OMB request for this evaluation.

DATES: *Comments Due Date:* September 21, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1-800-877-8339).

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at Colette.Pollard@hud.gov or telephone (202) 402-3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard. Copies of the proposed forms and other available information may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected

agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Pre-Purchase Homeownership Counseling Demonstration and Impact Evaluation.

OMB Control Number, if applicable: Pending.

Description of the need for the information and proposed use: This request is for the clearance of data collection instruments designed to collect the information necessary to conduct a random assignment evaluation of pre-purchase homeownership counseling. The evaluation will produce valuable information about the impact of pre-purchase homeownership counseling on a range of outcomes for low- to moderate-income, first-time home buyers. Up to 7,000 study participants will be recruited through branch offices and telephone centers of three national lenders in 20 jurisdictions throughout the country. Lender staff will ask potential homebuyers if they are interested in learning more about the study. If potential homebuyers are interested in learning more about the study, then the lender will pass potential homebuyers' contact information to the study team. The study team will then contact those potential homebuyers to explore study participation and complete an informed consent agreement, an eligibility assessment, and baseline survey. To achieve 7,000 enrolled study participants, the intake and eligibility assessment will be conducted with up to 17,500 potential study participants over a period of 12 months. To achieve 17,500 potential study participants, lenders will contact approximately 87,500 customers. Additionally, 200 study participants will be asked to participate in semi-structured follow-up interviews that seek to learn about participants' experiences with enrollment and interaction with participating counseling agencies.

In each of the 20 jurisdictions for the study, local counseling agencies and national counseling intermediaries will be recruited to provide (a) online education and telephone counseling and (b) in-person education and counseling. One national provider will be responsible for the online education and telephone counseling. Local counseling agencies will be recruited to provide the in-person education and counseling. In each case, the counseling agencies will be responsible for documenting the counseling services provided to the 4,026 study participants assigned to receive one of these types of counseling (the remaining 2,975 study participants constitute the control group). Staff of the lenders will be asked to participate in semi-structured interviews that seek to understand the recruitment process and provide the study team a weekly outcome report for recruitment calls. Staff at the counseling agencies will be asked to participate in semi-structured interviews that seek to understand provision of counseling in each jurisdiction and provide the study team information on counseling and education services that study participants receive. The purpose of these data collection activities is to collect the information needed to evaluate the impact of pre-purchase housing counseling.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The average time per client for lender staff to conduct a recruitment call is 3 minutes, with recruitment conducted with up to 87,500 potential homebuyers. The average time per client for the 17,500 potential first-time homebuyers to complete an eligibility assessment is 5 minutes. The average time per client for the 7,000 potential study participants to complete the consent form is 5 minutes. The average time per client for the 7,000 enrolled study participants to complete the baseline survey is 25 minutes. The average time per study participant for the 7,000 enrolled study participants to complete each tracking letter is 5 minutes. There will be 9 tracking letters issued over the course of 3 years. The average time per client for the follow-up interviews is 30 minutes. The average time for each study participant's co-borrower to complete the co-borrower consent agreement is 3 minutes. The average time per client for counseling agencies to document the services provided to study participants is 10 minutes, with responses required for

both the educational component and for the counseling services. The average time for counseling agency staff to complete interviews is 60 minutes—up to 8 interviews conducted at up to 40 counseling organizations. The average time for lenders' staff to complete recruitment calls and input the contact information is 3 minutes. The average time for lenders' call center teams to complete the recruitment call outcome report is 30 minutes. These reports will be provided to the study team weekly through the enrollment period. The enrollment period is estimated to last 52 weeks for each lender. The average time for lenders' staff to complete interviews is 60 minutes. Up to 84 staff will be interviewed across 3 lenders. The total burden for the study is 21,056 hours: 14,683 hours for study participants and potential study participants, 105 hours for study participants' co-borrowers, 1,662 hours for counseling agencies, and 4,606 hours for lenders.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: August 15, 2012.

Colette Pollard,

*Departmental Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 2012-20586 Filed 8-21-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLC0956000 L14200000.BJ0000]

Notice of Filing of Plats; Colorado.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plat listed below and afford all affected parties a proper period of time to protest this action prior to the plat filing. During this time, the plat will be available for viewing at <http://www.glorerecords.blm.gov>.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen on September 21, 2012.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, Colorado 80215-7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239-3856. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurvey and survey in Township 35 North, Range 11 West, New Mexico Principal Meridian, Colorado, were accepted on July 23, 2012.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2012-20688 Filed 8-21-12; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Number 1010-0181]

Information Collection: Southern Alaska Sharing Network and Subsistence Study; Proposed Collection for OMB Review; Comment Request

ACTION: 60-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Ocean Energy Management (BOEM) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) pertains to conducting a survey in Alaska, "Southern Alaska Sharing Network and Subsistence Study."

DATES: Submit written comments by October 22, 2012.

ADDRESSES: Please send your comments on this ICR to the BOEM Information Collection Clearance Officer, Arlene Bajusz, Bureau of Ocean Energy Management, 381 Elden Street, HM-3127, Herndon, Virginia 20170 (mail); or arlene.bajusz@boem.gov (email); or 703-787-1209 (fax). Please reference ICR 1010-0181 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Office of Policy, Regulations, and Analysis at (703) 787-1025. You may also request a free copy of the study description.

SUPPLEMENTARY INFORMATION: OMB Control Number: 1010–0181.

Title: Southern Alaska Sharing Network and Subsistence Study.

Abstract: The Bureau of Ocean Energy Management (BOEM), under the Department of the Interior (DOI), is the Federal administrative agency that conducts OCS lease sales and monitors and mitigates adverse impacts that might be associated with offshore resource development. Within BOEM, the Environmental Studies Program implements and manages the responsibilities of research. This study will facilitate the meeting of DOI/BOEM information needs on subsistence food harvest and sharing activities in various coastal Alaska areas.

Planning areas for potential resource development in Alaska can include large geographic areas with diverse, abundant, and environmentally sensitive resources. Within these areas, the DOI's Proposed OCS Oil and Gas Leasing Program considers that there will be an oil and gas lease sale in the future. These proposed sale areas or adjacent areas support major productive commercial and subsistence fisheries, provide habitat to numerous marine mammals, and are a significant migration and staging area for internationally important waterfowl. Numerous communities in the State of Alaska rely heavily on subsistence fisheries.

This study assesses the vulnerabilities of several coastal communities in southern Alaska as to the potential effects of offshore oil and gas development on subsistence food harvest and sharing activities. It investigates the resilience of local sharing networks that structure contemporary subsistence-cash economies using research methods that involve the residents of these communities most proximate to the future sale area(s).

The BOEM will use the information collected to gain knowledge about local social systems that will help shape development leasing strategies and serve as an interim baseline for impact monitoring to compare against future research in these areas. Without this data, BOEM will not have sufficient information to make informed leasing and development decisions for these areas.

Survey Instrument: The research will be collected from a survey administered to each head of household in the communities to collect information about the subsistence (harvest data) and sharing networks of the communities. The information under this collection

will be obtained through personal interviews that are voluntary.

Interview Methods: The interviews for each study will be conducted in person in a setting most comfortable for the respondents. This personal method is more expensive and time consuming for the researchers, but these drawbacks are outweighed by improvements in the quality of information obtained and the rapport established. Telephone interviews have not been successful in rural Alaska. Each respondent will be paid an honorarium for taking part in the study. Responses are voluntary and confidential.

Frequency: One-time event for each study.

Description of Respondents: Approximately 128 respondents from Alaska coastal communities.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 192 hours. We estimate each survey will take about 1.5 hours.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: We invite comments on: (1) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (4) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Dated: August 16, 2012.

Deanna Meyer-Pietruszka,
Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2012–20590 Filed 8–21–12; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–487 (Final) and 731–TA–1197–1198 (Final)]

Steel Wire Garment Hangers From Taiwan and Vietnam; (Corrected Notice) Scheduling of the Final Phase of Countervailing Duty and Antidumping Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–487 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation Nos. 731–TA–1197–1198 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Vietnam of steel wire garment hangers and less-than-fair-value imports from Taiwan and Vietnam of steel wire garment hangers, provided for in subheadings 7326.20.00 and 7323.99.90 of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as “Steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped or latex (industrial) hangers. Specifically excluded from the scope of the investigation are (a) wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome plated steel wire garment hangers with a diameter of 3.4 mm or greater.”

Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* August 2, 2012.

FOR FURTHER INFORMATION CONTACT:

Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Vietnam of steel wire garment hangers, and that such products from Vietnam and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on December 29, 2011, by M&B Metal Products Company, Inc. (Leeds, AL); Innovation Fabrication LLC/Indy Hanger (Indianapolis, IN); and US Hanger Company, LLC (Gardena, CA).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons,

or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 9, 2012, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 24, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 16, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 18, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 16, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the

Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 31, 2012. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before October 31, 2012. On November 9, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 13, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. Finally, on December 21, 2012, parties may submit supplemental final comments addressing only Commerce's final antidumping and countervailing duty determinations regarding imports from Vietnam. These supplemental final comments must not contain new factual information and may not exceed five (5) pages in length. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's web site at <http://edis.usitc.gov>.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published

pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 17, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012-20625 Filed 8-21-12; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-486 and 731-TA-1195-1196 (Final)]

Utility Scale Wind Towers From China and Vietnam; Scheduling of the Final Phase of Countervailing Duty and Antidumping Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701-TA-486 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation Nos. 731-TA-1195-1196 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China and Vietnam of utility scale wind towers, provided for in subheading 7308.20.00 of the Harmonized Tariff Schedule of the United States.¹

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts ("kW") and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (i.e., where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (e.g., flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* August 2, 2012.

FOR FURTHER INFORMATION CONTACT:

Nathanael Comly (202-205-3174), Office of Investigations, U.S.

International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China and Vietnam of utility scale wind towers, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on December 29, 2011, by Broadwind Towers, Inc., Manitowoc, WI; DMI Industries, Fargo, ND; Katana Summit LLC, Columbus, NE; and Trinity Structural Towers, Inc., Dallas, TX.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in

or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 29, 2012, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on December 13, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 6, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 10, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 6, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 20, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before December 20, 2012. On January 11, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 15, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at <http://edis.usitc.gov>.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 17, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–20624 Filed 8–21–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–344 (Third Review)]

Tapered Roller Bearings From China

Determination

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on tapered roller bearings from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

Background

The Commission instituted this review on August 1, 2011 (76 FR 45853) and determined on November 4, 2011 that it would conduct a full review (76 FR 72213, November 22, 2011). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 29, 2012 (77 FR 12326). The hearing was held in Washington, DC, on June 19, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on August 16, 2012. The views of the Commission are contained in USITC Publication 4343 (August 2012), entitled *Tapered Roller Bearings from China: Investigation No. 731–TA–344 (Third Review)*.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioner Deanna Tanner Okun did not participate in this five-year review.

By order of the Commission.

Issued: August 16, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–20600 Filed 8–21–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–838]

Certain Food Waste Disposers and Components and Packaging Thereof; Notice of Commission Determination Not to Review an Initial Determination Granting Complainant's Motions To Amend the Notice of Investigation and Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 5) granting a motion by complainant Emerson Electric Co. of St. Louis, Missouri to amend the Notice of Investigation ("NOI") and complaint to add as respondents Jiangsu Mega Motors ("Mega") of Jiangsu, China and Zhejiang Zhongda Technical Export Co., Ltd. ("Zhongda") of Hangzhou, China.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 20, 2012, based on a complaint filed by Emerson Electric Co. ("Emerson"), of St. Louis, Missouri, alleging violations of section 337 of the

Tariff Act of 1930 (19 U.S.C. 1337) by reason of (1) infringement of the claim of U.S. Patent No. D535,850; (2) infringement of U.S. Trademark Registration No. 2,518,010 and common law trademarks; (3) unfair competition by passing off; (4) trademark dilution; and (5) trade dress infringement. 77 FR 23751 (Apr. 20, 2012). The Commission's Notice of Investigation named Anaheim Manufacturing Co. ("Anaheim"), of Brea, California, as the only respondent. The Office of Unfair Import Investigations ("OUII") was also named as a party.

On June 7, 2012, Emerson filed a corrected motion to amend the complaint and NOI to add Mega as a respondent. Then on June 28, 2012, Emerson filed a second motion to amend the complaint and NOI to add Zhongda as a respondent. Respondent Anaheim did not oppose the motions. On June 15, 2012 and July 10, 2012, the OUII investigative staff attorney ("IA") filed responses in support of the motions to amend.

On July 17, 2012, the ALJ issued an ID granting Emerson's motions to amend the complaint and NOI to add Mega and Zhongda as respondents. The ALJ found that Emerson made a showing of good cause for the amendments based on new evidence obtained during the course of the investigation. In particular, the ALJ noted that Emerson first learned that Mega was involved in the production and manufacturing of the accused products in interrogatory responses. In addition, the ALJ noted that Emerson first learned that Zhongda was involved in the distribution, transportation, and importation of the accused products during discovery. The ALJ further found that neither the public interest nor any party would be prejudiced by the amendments. Anaheim filed a petition for review on July 25, 2012, and the IA and Emerson filed replies on August 1, 2012. We note that Anaheim's petition is not proper under the Commission's Rules. 19 CFR 210.43(a)(2).

The Commission finds no reason to overturn the ALJ's findings, and accordingly, has determined not to review the subject ID.

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 210.43–45 of the Commission's Rules of Practice and Procedure (19 CFR 210.43–45).

By order of the Commission.

Issued: August 16, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–20601 Filed 8–21–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree and Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act and Federal Water Pollution Control Act

Notice is hereby given that on August 13, 2012, a proposed Consent Decree and Settlement Agreement ("Proposed Consent Decree") in *In re: EaglePicher Holdings, Inc., et al.*, Civil Action No. 05–12601 was lodged with the United States Bankruptcy Court for the Southern District of Ohio.

In this action, the United States sought natural resource damages under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(a), and Section 311(f) of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. 1321(f), related to the release or threat of release of hazardous substances from EaglePicher Technology, LLC's ("EPT") former facility in Joplin, Missouri. The United States also sought response costs and natural resource damages under CERCLA from EaglePicher Incorporated ("EPI") related to the release or threat of release of hazardous substances from the Eagle Zinc Superfund Site in Hillsboro, Illinois, the Delta, Ohio residential fill sites, the Wentworth Subdistrict of the Newton County Mine Tailings Superfund Site in Newton County, Missouri, the Phoenix Park Millsite in Creede, Colorado, and the Creta Copper Operations Site in Jackson County, Oklahoma.

The proposed Consent Decree entered into by the United States, the State of Missouri, and EP Management Corporation resolves the United States' and State of Missouri's claims against EPT for natural resource damages under CERCLA and the Clean Water Act at the former EPT manufacturing facility in Joplin, Missouri. The proposed Consent Decree also resolves the United States' claims against EaglePicher Incorporated (EPI) under CERCLA, for: (1) EPA response costs at the Eagle Zinc Superfund Site in Hillsboro, Illinois; (2) EPA response costs at three residential fill sites located in Delta Ohio; (3) EPA response costs at the Wentworth Subdistrict of the Newton County Mine

Tailings, Superfund Site in Newton County, Missouri; (4) DOI Natural Resource Damages at the Newton County Mine Tailings Superfund Site; (5) USDA Forest Service Response Costs at the Phoenix Park Millsite in Creede, Colorado; (6) Natural Resource Damages at the Creta Copper Operation Site in Jackson County, OK. The proposed Consent Decree provides for a payment by EPMC of \$822,600 to resolve the United States' and States of Missouri's natural resource damage claims against EPT, of which \$255,955 will be paid to the United States, \$658,000 will be placed in an escrow account for the restoration, replacement, or acquisition of the equivalent of the injured natural resources at the former EPT facility in Joplin, Missouri, and \$8,645 will be paid to the State of Missouri. The proposed Consent Decree also obligates EPMC to pay an additional \$100,000 to resolve the United States' claims for response costs and natural resource damages against EPI.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re: EaglePicher Holdings, Inc., et al.*, D.J. Ref. 90–11–3–747/2.

During the public comment period, the Proposed Consent Decree, may also be examined on the following Department of Justice Web site, to http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to "Consent Decree Copy" (EESCDCopy.ENRD@usdoj.gov), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of \$9.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent

Decree Library at the address given above.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012-20647 Filed 8-21-12; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0115]

Agency Information Collection

Activities: Proposed Collection; Comments Requested: Extension of a Currently Approved Collection; Victims of Crime Act, Crime Victim Assistance Grant Program State Performance Report

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime (OVC) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 116, page 36009 on June 15, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202 395-7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Victims of Crime Act, Crime Victim Assistance Grant Program, State Performance Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1121-0115.

Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice is sponsoring the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Primary: State government. Other: None. The VOCA, Crime Victim Assistance Grant Program, State Performance Report is a required annual submission by state grantees to report to the Office for Victims of Crime (OVC) on the uses and effects VOCA victim assistance grant funds have had on services to crime victims in the State, to certify compliance with the eligibility requirement of VOCA, and to provide a summary of supported activities carried out within the State during the grant period. This information will be aggregated and serve as supporting documentation for the Director's biennial report to the President and to the Congress on the effectiveness of the activities supported by these grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The information to compile these reports will be drawn from victim assistance program data to the 56 respondents (grantees). The number of victim assistance programs varies widely from state to state. A state could be responsible for compiling subgrant data for as many as 436

programs (California) to as few as 12 programs (District of Columbia). Therefore, the estimated clerical hours can range from 1 to 70 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The current estimated burden is 1,176 (20) hours per respondent (estimate median) + 1 hour per respondent for recordkeeping × 56 respondents = 1,176). There is a decrease in the annual recordkeeping and reporting burden. This decrease is a result of a change in the number of respondents reporting.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E-508, Washington, DC 20530.

Dated: August 14, 2012.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012-20562 Filed 8-21-12; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0021]

Agency Information Collection

Activities: Proposed Collection; Comments Requested: Accounting System and Financial Capability Questionnaire

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Office of Justice Programs, Office of the Chief Financial Officer, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 117, page 36294, on June 18, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions,

or need a copy of the proposed information collection instrument with instructions or additional information, please contact Leigh Benda, Chief Financial Officer, The Office of the Chief Financial Officer, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension, without change of a currently approved collection.

(2) *Title of the Form/Collection:* Accounting System and Financial Capability Questionnaire.

(3) *Agency form number 7120/1. Component Sponsoring Collection:* The Office of the Chief Financial Officer, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief Abstract. Primary:* Business or other for-profit entities and not-for-profit institutions. *Other:* None. The information is required for assessing the financial risk of a potential recipient in administering federal funds in accordance with OMB Circular A-110 and 28 CFR part 70.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Total of 100 respondents estimated at 4 hours each.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: The estimated total public burden associated with this information is 400 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E-508, Washington, DC 20530.

Dated: August 14, 2012.

Jerri Murray,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 2012-20563 Filed 8-21-12; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0243]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Community Partnership Grants Management System (GMS)

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Office of Justice Programs (OJP), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

This proposed information collection was previously published in the **Federal Register** Volume 77, Number 117, page 36294, on June 18, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Maria Swineford, (202) 616-0109, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 or maria.swineford@usdoj.gov.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Renewal of a currently approved collection (1121-0243).

(2) *The Title of the Form/Collection:* Community Partnership Grants Management System (GMS).

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* No form number available. Office of Justice Programs, Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract:* The primary respondents are State, Local or Tribal Governments applying for grants. GMS is the OJP web-based grants applications system and award management system. GMS provides automated support throughout the award lifecycle. GMS facilitates reporting to Congress and other interested agencies. The system provides essential information required to comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA). GMS has also been designated the OJP official system of record for grants activities by the National Archives and Records Administration (NARA).

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* An estimated 10,128 organizations will respond to GMS and on average it will take each of them up to 14 hours to complete various award lifecycle processes within the system varying from application submission, award management and reporting, and award closeout.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this application is 142,100 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E-508, Washington, DC 20530.

Dated: August 14, 2012.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012-20564 Filed 8-21-12; 8:45 am]

BILLING CODE 4410-18-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request Received under the Antarctic Conservation Act of 1978.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978, Public Law 95-541. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 21, 2012. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy at the above address or (703) 292-7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and

certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2011-002) to David Ainley on May 28, 2010. The issued permit allows the applicant to enter Beaufort Island ASPA 105, Cape Royds ASPA 121, and Cape Crozier ASPA 124 to band 1800 Adelie fledglings, implant PIT tags on 250 chick and 300 adult Adelies, and, apply TDR/satellite tags, weigh and blood sample 55 Adelie adults, affix, weight, then later remove "fish tag", weight and release, and mark nests as part of a study to determine the effect of age, experience and physiology on individual foraging efficiency, breeding success and survival, and develop a comprehensive model for the Ross-Beaufort island metapopulations incorporating all the factors investigated. A recent modification to this permit, dated August 1, 2012, permitted the applicant to: (1) Increase the number of adults from 55 to 85 for attaching satellite tags at Cape Crozier (ASPA 124). The additional 30 adults will have SPLASH tags (Wildlife Computers) attached. The SPLASH tags record depth, light, and temperature every second and report positions to the ARGOS satellite a few times per day.

(2) At Cape Royds (ASPA 121) up to 30 Adelies will have their body mass recorded, bill and flipper dimensions taken, 3-5 feathers removed to confirm gender of the penguin, and have GPS/TDR tags attached and later removed. The information gained from the tags will be used to assess the change in foraging behavior upon the arrival of whales in the penguin's foraging area within the leads of the McMurdo Sound fast ice as it breaks up. The density and horizontal/depth distribution of prey will be assessed using deployed ROV.

Now the applicant proposes a modification to his permit to deploy an iRobot sea glider that will assess the prey field offshore of Cape Crozier at the same time the splash tags are deployed on the penguin to assess their foraging behavior and location. In part the data from the satellite tags will help to steer the glider to sample in and out of foraging "hotspots". The data will demonstrate the factors that affect individual variation in foraging capabilities.

Location: ASPA 121—Cape Royds, and ASPA 124—Cape Crozier, Ross Island, and ASPA 105—Beaufort Island, Ross Sea.

Dates: September 1, 2012 to August 31, 2015.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2012-20645 Filed 8-21-12; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0195]

Test Documentation for Digital Computer Software Used in Safety Systems of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG-1207, "Test Documentation for Digital Computer Software used in Safety Systems of Nuclear Power Plants." The DG-1207 is proposed Revision 1 of RG 1.170, dated September 1997. This revision endorses, with clarifications, the enhanced consensus practices for test documentation for software and computer systems as described in the Institute of Electrical and Electronics Engineers (IEEE) Standard 829-2008, "IEEE Standard for Software and System Test Documentation."

DATES: Submit comments by November 23, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID NRC-2012-0195. You may submit comments by any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0195. 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.

FOR FURTHER INFORMATION CONTACT: Karl Sturzebecher, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-251-7494 or email Karl.Sturzebecher@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC-2012-0195 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 NRC-2012-0195.

- *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 draft regulatory guide is available electronically under ADAMS Accession Number ML083370243. The regulatory analysis may be found in ADAMS under Accession Number ML103200469.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC-2012-0195 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 enters the comment submissions into ADAMS. 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.

II. Further Information

The NRC is issuing for public comment a draft guide in the NRC’s “Regulatory Guide” series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC’s regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide entitled “Test Documentation for Digital Computer Software Used in Safety Systems of Nuclear Power Plants” is temporarily identified by its task number, DG-1207. The DG-1207 is proposed Revision 1 of Regulatory Guide 1.170, “Test Documentation for Digital Computer Software Used in Safety Systems of Nuclear Power Plants” dated September 1997.

This regulatory guide endorses IEEE Std. 829-2008, “IEEE Standard for Software and System Test Documentation,” issued 2008, with the exceptions stated in the regulatory positions. IEEE Std. 829-2008 describes methods acceptable to the NRC staff for use in complying with the NRC’s regulations with respect to software and system test documentation for digital computer software used in the safety systems of nuclear power plants. In particular, the methods are consistent with Title 10, of the Code of Federal Regulations, Part 50, “Domestic Licensing of Production and Utilization Facilities,” Appendix A, “General Design Criteria for Nuclear Power

Plants,” General Design Criterion 1, “Quality Standards and Records,” which requires, in part, that a quality assurance program be established and implemented to provide adequate assurance that systems and components important to safety will satisfactorily perform their safety functions.

This DG is part of a series of 6 complimentary guides addressing the issue of digital software in power plant applications. The following is a complete list of all 6 of the DGs:

- DG-1267 is proposed revision 2 of RG 1.168, “Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants.” DG-1267 is available in ADAMS at Accession number ML103160431,

- DG-1206 is proposed revision 1 of RG 1.169, “Configuration Management Plans for Digital Computer Software used in Safety Systems of Nuclear Power Plants.” DG-1206 is available in ADAMS at Accession number ML103200044.

- DG-1207 is proposed revision 1 of RG 1.170, “Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants.” DG-1207 is available in ADAMS at Accession number ML083370243.

- DG-1208 is proposed revision 1 of RG 1.171, “Software Unit Testing for Digital Computer Software used in Safety Systems of Nuclear Power Plants.” DG-1208 is available in ADAMS at Accession number ML103120751.

- DG-1209 is proposed revision 1 of RG 1.172, “Software Requirement Specifications for Digital Computer Software and Complex Electronics used in Safety Systems of Nuclear Power Plants.” DG-1209 is available in ADAMS at Accession number ML103080963.

- DG-1210 is proposed revision 1 of RG 1.173, “Developing Software Life-Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants.” DG-1210 is available in ADAMS at Accession number ML103120727.

Dated at Rockville, Maryland, this 9th day of August, 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012-20638 Filed 8-21-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0195]

Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG-1208, "Software Unit Testing for Digital Computer Software used in Safety Systems of Nuclear Power Plants." The DG-1208 is proposed Revision 1 of RG 1.171, dated September 1997. This revision endorses, with clarifications, the enhanced consensus practices for testing of computer software as described in the American National Standards Institute and Institute of Electrical and Electronics Engineers (ANSI/IEEE) Standard 1008-1987, "IEEE Standard for Software Unit Testing."

DATES: Submit comments by November 23, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID NRC-2012-0195. You may submit comments by any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0195. 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.

FOR FURTHER INFORMATION CONTACT: Karl Sturzebecher, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-251-7494 or email Karl.Sturzebecher@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC-2012-0195 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0195.

- *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 draft regulatory guide is available electronically under ADAMS Accession Number ML103120751. The regulatory analysis may be found in ADAMS under Accession Number ML103120752.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC-2012-0195 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 enters the comment submissions into

ADAMS. 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.

II. Further Information

The NRC is issuing for public comment a draft guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide entitled "Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants" is temporarily identified by its task number, DG-1208. The DG-1208 is proposed Revision 1 of Regulatory Guide 1.171, "Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants" dated September 1997.

This RG endorses ANSI/IEEE Std. 1008-1987, "IEEE Standard for Software Unit Testing," issued in 1987 with the exceptions stated in the regulatory positions. ANSI/IEEE Std. 1008-1987 describes methods acceptable to the NRC staff for use in complying with the NRC's regulations with respect to software testing for digital computer software used in the safety systems of nuclear power plants. In particular, the methods are consistent with part 50 of Title 10 of the Code of Federal Regulations (10 CFR), "Domestic Licensing of Production and Utilization Facilities," Appendix A, "General Design Criteria for Nuclear Power Plants," General Design Criterion 1, "Quality Standards and Records," which requires, in part, that a quality assurance program be established and implemented to provide adequate assurance that systems and components important to safety will satisfactorily perform their safety functions.

This DG is part of a series of 6 complimentary guides addressing the

issue of digital software in power plant applications. The following is a complete list of all 6 of the DGs:

- DG-1267 is proposed revision 2 of RG 1.168, "Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1267 is available in ADAMS at Accession number ML103160431,
- DG-1206 is proposed revision 1 of RG 1.169, "Configuration Management Plans for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1206 is available in ADAMS at Accession number ML103200044.
- DG-1207 is proposed revision 1 of RG 1.170, "Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants." DG-1207 is available in ADAMS at Accession number ML083370243.
- DG-1208 is proposed revision 1 of RG 1.171, "Software Unit Testing for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1208 is available in ADAMS at Accession number ML103120751.
- DG-1209 is proposed revision 1 of RG 1.172, "Software Requirement Specifications for Digital Computer Software and Complex Electronics used in Safety Systems of Nuclear Power Plants." DG-1209 is available in ADAMS at Accession number ML103080963.
- DG-1210 is proposed revision 1 of RG 1.173, "Developing Software Life-Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1210 is available in ADAMS at Accession number ML103120727.

Dated at Rockville, Maryland, this 9th day of August, 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012-20639 Filed 8-21-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0195]

Verification, Validation, Reviews, and Audits for Digital Computer Software Used in Safety Systems of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG-1267, "Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants."

The DG-1210 is proposed Revision 2 of Regulatory Guide (RG) 1.168, dated February 2004. This revision endorses, with clarifications and exceptions, the consensus practices for complying with NRC regulations promoting the development of, and compliance with, software verification and validation reviews and audits described in the Institute of Electrical and Electronics Engineers (IEEE) Standard 1012-2004, "IEEE Standard for Software Verification and Validation" and IEEE Standard 1028-2008, "IEEE Standard for Software Reviews and Audits."

The NRC is soliciting stakeholder feedback on the following question—Should RG 1.168 be revised to endorse IEEE Std. 1012-2012 rather than IEEE Std. 1012-2004? IEEE Std. 1012-2012 expands the scope of IEEE Std. 1012-2004 to include verification and validation (V&V) task guidance for systems, software and hardware while IEEE Std. 1012-2004 only provides software V&V task guidance.

DATES: Submit comments by November 23, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID NRC-2012-0195. You may submit comments by any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0195. 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.

FOR FURTHER INFORMATION CONTACT: Karl Sturzebecher, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-251-7494 or email Karl.Sturzebecher@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC-2012-0195 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0195.

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- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC-2012-0195 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.

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The draft regulatory guide entitled "Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants" is temporarily identified by its task number, DG-1267. The DG-1267 is proposed Revision 2 of RG 1.168, "Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants" dated February 2004.

This RG endorses with clarifications and exceptions, the consensus practices for complying with NRC regulations promoting the development of, and compliance with, software verification and validation reviews and audits described in IEEE Std. 1012-2004, "IEEE Standard for Software Verification and Validation" and IEEE Std. 1028-2008, "IEEE Standard for Software Reviews and Audits." These 2 IEEE standards describe methods acceptable to the NRC staff for use in complying with the NRC's regulations with respect to software verification and auditing of digital computer software used in the safety systems of nuclear power plants. In particular, the methods are consistent with part 50 of Title 10

of the Code of Federal Regulations (10 CFR), "Domestic Licensing of Production and Utilization Facilities," Appendix A, "General Design Criteria for Nuclear Power Plants," General Design Criterion 1, "Quality Standards and Records," which requires, in part, that a quality assurance program be established and implemented to provide adequate assurance that systems and components important to safety will satisfactorily perform their safety functions.

This draft regulatory guide is part of a series of 6 complimentary guides addressing the issue of digital software in power plant applications. The following is a complete list of all 6 of the DGs:

- DG-1267 is proposed revision 2 of RG 1.168, "Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1267 is available under ADAMS at Accession Number ML103160431.

- DG-1206 is proposed revision 1 of RG 1.169, "Configuration Management Plans for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1206 is available in ADAMS under Accession Number ML103200044.

- DG-1207 is proposed revision 1 of RG 1.170, "Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants." DG-1207 is available in ADAMS under Accession Number ML083370243.

- DG-1208 is proposed revision 1 of RG 1.171, "Software Unit Testing for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1208 is available in ADAMS under Accession Number ML103120751.

- DG-1209 is proposed revision 1 of RG 1.172, "Software Requirement Specifications for Digital Computer Software and Complex Electronics used in Safety Systems of Nuclear Power Plants." DG-1209 is available in ADAMS under Accession Number ML103080963.

- DG-1210 is proposed revision 1 of RG 1.173, "Developing Software Life-Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1267 is available in ADAMS under Accession Number ML103120727.

Dated at Rockville, Maryland, this 9th day of August 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

*Chief, Regulatory Guide Development Branch,
Division of Engineering, Office of Nuclear
Regulatory Research.*

[FR Doc. 2012-20636 Filed 8-21-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0195]

Developing Software Life Cycle Processes for Digital Computer Software Used in Safety Systems of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG-1210, "Developing Software Life Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants." The DG-1210 is proposed Revision 1 of RG 1.173, dated September 1997. This revision endorses, with clarifications, the enhanced consensus practices for developing software life-cycle processes for digital computers used in safety systems of nuclear power plants described in the Institute of Electrical and Electronic Engineers (IEEE) Standard 1074-2006, "IEEE Standard for Developing a Software Project Life Cycle Process," issued 2006.

DATES: Submit comments by November 23, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID NRC-2012-0195. You may submit comments by any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0195. 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.

FOR FURTHER INFORMATION CONTACT: Karl Sturzebecher, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-251-7494 or email Karl.Sturzebecher@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

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• *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

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comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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II. Further Information

The NRC is issuing for public comment a draft guide in the NRC's “Regulatory Guide” series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The DG entitled “Developing Software Life Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants” is temporarily identified by its task number, DG-1210. The DG-1210 is proposed Revision 1 of RG 1.173, “Developing Software Life Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants” dated September 1997.

This RG endorses IEEE Std. 1074-2006, “IEEE Standard for Developing a Software Project Life Cycle Process” issued in 1987 with the exceptions stated in the regulatory positions. IEEE Std. 1074-2006 describes methods acceptable to the NRC staff for use in complying with the NRC's regulations with respect to software testing for digital computer software used in the safety systems of nuclear power plants. In particular, the methods are consistent with part 50 of Title 10, of the Code of Federal Regulations (10 CFR), “Domestic Licensing of Production and Utilization Facilities,” Appendix A,

“General Design Criteria for Nuclear Power Plants,” General Design Criterion 1, “Quality Standards and Records,” which requires, in part, that a quality assurance program be established and implemented to provide adequate assurance that systems and components important to safety will satisfactorily perform their safety functions.

This DG is part of a series of 6 complimentary guides addressing the issue of digital software in power plant applications. The following is a complete list of all 6 of the DGs:

• DG-1267 is proposed revision 2 of RG 1.168, “Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants.” DG-1267 is available in ADAMS at Accession number ML103160431;

• DG-1206 is proposed revision 1 of RG 1.169, “Configuration Management Plans for Digital Computer Software used in Safety Systems of Nuclear Power Plants.” DG-1206 is available in ADAMS at Accession number ML103200044;

• DG-1207 is proposed revision 1 of RG 1.170, “Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants.” DG-1207 is available in ADAMS at Accession number ML083370243;

• DG-1208 is proposed revision 1 if RG 1.171, “Software Unit Testing for Digital Computer Software used in Safety Systems of Nuclear Power Plants.” DG-1208 is available in ADAMS at Accession number ML103120751;

• DG-1209 is proposed revision 1 of RG 1.172, “Software Requirement Specifications for Digital Computer Software and Complex Electronics used in Safety Systems of Nuclear Power Plants.” DG-1209 is available in ADAMS at Accession number ML103080963;

• DG-1210 is proposed revision 1 of RG 1.173, “Developing Software Life-Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants.” DG-1210 is available in ADAMS at Accession number ML103120727.

Dated at Rockville, Maryland, this 9th day of August 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,
*Chief, Regulatory Guide Development Branch,
Division of Engineering, Office of Nuclear
Regulatory Research.*

[FR Doc. 2012-20641 Filed 8-21-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0195]

Software Requirement Specifications for Digital Computer Software and Complex Electronics Used in Safety Systems of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG-1209, "Software Requirement Specifications for Digital Computer Software and Complex Electronics used in Safety Systems of Nuclear Power Plants." The DG-1209 is proposed Revision 1 of RG 1.172, dated September 1997. This revision endorses, with clarifications, the enhanced consensus practices for testing of computer software as described in the American National Standards Institute and Institute of Electrical and Electronics Engineers (ANSI/IEEE) Standard 830-1998, "IEEE Recommended Practice for Software Requirements Specifications."

DATES: Submit comments by November 23, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID NRC-2012-0195. You may submit comments by any of the following methods:

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- *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.

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FOR FURTHER INFORMATION CONTACT: Karl Sturzebecher, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-251-7494 or email Karl.Sturzebecher@nrc.gov.

SUPPLEMENTARY INFORMATION:

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The DG entitled "Software Requirement Specifications for Digital Computer Software and Complex Electronics used in Safety Systems of Nuclear Power Plants" is temporarily identified by its task number, DG-1209. The DG-129 is proposed Revision 1 of RG 1.172, "Software Requirements Specifications for Digital Computer Software used In Safety Systems Of Nuclear Power Plants," dated September 1997.

This RG endorses IEEE Standard 830-1998 with the exceptions stated in the regulatory positions. IEEE Std. 830-1998 describes methods acceptable to the NRC staff for use in complying with the NRC's regulations with respect to software requirement specifications for digital computers and complex electronics used in safety systems of nuclear power plants. In particular, the methods are consistent with part 50 of Title 10, of the Code of Federal Regulations (10 CFR), "Domestic Licensing of Production and Utilization Facilities," Appendix A, "General Design Criteria for Nuclear Power Plants," General Design Criterion 1, "Quality Standards and Records," which requires, in part, that a quality assurance program be established and implemented to provide adequate assurance that systems and components important to safety will satisfactorily perform their safety functions.

This DG is part of a series of 6 complimentary guides addressing the issue of digital software in power plant applications. The following is a complete list of all 6 of the DGs:

- DG-1267 is proposed revision 2 of RG 1.168, "Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1267 is available in ADAMS at Accession number ML103160431;

- DG-1206 is proposed revision 1 of RG 1.169, "Configuration Management Plans for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1206 is available in ADAMS at Accession number ML103200044;

- DG-1207 is proposed revision 1 of RG 1.170, "Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants." DG-1207 is available in ADAMS at Accession number ML083370243;

- DG-1208 is proposed revision 1 of RG 1.171, "Software Unit Testing for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1208 is available in ADAMS at Accession number ML103120751;

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- DG-1210 is proposed revision 1 of RG 1.173, "Developing Software Life-Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1210 is available in ADAMS at Accession number ML103120727;

Dated at Rockville, Maryland, this 9th day of August 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

*Chief, Regulatory Guide Development Branch,
Division of Engineering, Office of Nuclear
Regulatory Research.*

[FR Doc. 2012-20640 Filed 8-21-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0195]

Configuration Management Plans for Digital Computer Software Used in Safety Systems of Nuclear Power Plants

AGENCY: Nuclear Regulatory
Commission.

ACTION: Draft regulatory guide; request
for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG-1206, "Configuration Management Plan for Digital Computer Software Used in Safety Systems of Nuclear Power Plants." The DG-1206 is proposed Revision 1 of RG 1.169, dated September 1997. This revision endorses, with clarifications, the enhanced consensus practices for planning software configuration management (SCM) as described in the Institute of Electrical and Electronics Engineers (IEEE) Standard 828-2005, "IEEE Standard for Software Configuration Management Plans."

DATES: Submit comments by November 23, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

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FOR FURTHER INFORMATION CONTACT: Karl Sturzebecher, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-251-7494 or email Karl.Sturzebecher@nrc.gov.

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The draft regulatory guide entitled "Configuration Management Plans for Digital Computer Software Used in Safety Systems of Nuclear Power Plants" is temporarily identified by its task number, DG-1206. The DG-1206 is proposed Revision 1 of RG 1.169, "Configuration Management Plans for Digital Computer Software Used in Safety Systems of Nuclear Power Plants" dated September 1997.

This RG endorses IEEE Std. 828-2005, "IEEE Standard for Software Configuration Management Plans," issued in 2005, with the exceptions stated in the regulatory positions. IEEE Std. 828-2005 describes methods acceptable to the NRC staff for use in complying with the NRC's regulations for promoting high functional reliability and design quality in software used in safety systems. In particular, the methods are consistent with part 50 of Title 10 of the Code of Federal Regulations (10 CFR), "Domestic Licensing of Production and Utilization Facilities," Appendix A, "General Design Criteria for Nuclear Power Plants," General Design Criterion 1, "Quality Standards and Records," which requires, in part, that the nuclear power unit licensee maintain or control appropriate records of the design and testing of structures, systems, and components important to safety throughout the life of the unit.

This draft regulatory guide is part of a series of 6 complimentary guides

addressing the issue of digital software in nuclear power plant applications. The following is a complete list of all 6 of the DGs:

1. DG-1267 is proposed revision 2 of RG 1.168, "Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1267 is available in ADAMS at Accession number ML103160431;

2. DG-1206 is proposed revision 1 of RG 1.169, "Configuration Management Plans for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1206 is available in ADAMS at Accession number ML103200044;

3. DG-1207 is proposed revision 1 of RG 1.170, "Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants." DG-1207 is available in ADAMS at Accession number ML083370243;

4. DG-1208 is proposed revision 1 of RG 1.171, "Software Unit Testing for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1208 is available in ADAMS at Accession number ML103120751;

5. DG-1209 is proposed revision 1 of RG 1.172, "Software Requirement Specifications for Digital Computer Software and Complex Electronics used in Safety Systems of Nuclear Power Plants." DG-1209 is available in ADAMS at Accession number ML103080963;

6. DG-1210 is proposed revision 1 of RG 1.173, "Developing Software Life-Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants." DG-1210 is available in ADAMS at Accession number ML103120727.

Dated at Rockville, Maryland, this 9th day of August 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

*Chief, Regulatory Guide Development Branch,
Division of Engineering, Office of Nuclear
Regulatory Research.*

[FR Doc. 2012-20637 Filed 8-21-12; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012-52; Order No. 1436]

International Mail Rates

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service notice of

changes in rates for Inbound International Expedited Services 2. This notice informs the public of the filing, addresses preliminary procedural matters, and invites public comment.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Notice of filing. The Commission hereby provides notice that on August 13, 2012, the Postal Service filed a Notice, pursuant to 39 CFR 3015.5, announcing its intention to change rates for Inbound International Expedited Services 2, effective January 1, 2013.¹ The Notice does not include any classification changes. Notice at 3.

Representations. The Postal Service states that Governors' Decision No. 08-20 established prices and classifications for this product and identifies subsequent dockets addressing price changes. *Id.* at 1-2. It also incorporates by reference (1) a previous explanation attributing the two-tiered rate structure for Inbound Expedited Services to the EMS Cooperative's expectation that all members will participate in the Pay-for-Performance Plan, and (2) a 2012 listing of countries indicating which designated postal operators fall into each price tier.² *Id.* at 2.

The Postal Service asserts that the new rates for Inbound International Expedited Services 2 are in compliance with the requirements of 39 U.S.C. 3633(a)(2) and that it has met its burden of providing notice to the Commission of changed rates within the scope of Governors' Decision No. 11-6, as required by 39 U.S.C. 3632(b)(3). *Id.* at 3-4.

Attachments. The Notice includes an application for non-public treatment of materials filed under seal (Attachment 1). These materials include Governors' Decision Nos. 08-20 and 11-6, the new rates, and financial work papers prepared to demonstrate compliance

¹ Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability and Application for Non-Public Treatment of Materials Filed Under Seal, August 10, 2012 (Notice).

² See Docket No. CP2009-57 (for explanation of rate structure) and United States Postal Service Quarterly Update in Response to Order No. 162, Docket Nos. MC2009-10 and CP2009-12, July 20 2012 (for a list of countries).

with the 39 CFR 3015.5(c)(1). Other attachments include redacted copies of the referenced Governors' Decisions (Attachments 2A and 2B); a redacted set of the new rates (Attachment 3); and a certification addressing costs and prices (Attachment 4).

Public portions of the Postal Service's filing can be accessed via the Commission's Web site (<http://www.prc.gov>). Access to non-public documents is governed by Commission rule 3007.40.

Supplemental information. Pursuant to 39 CFR 3015.6, the Commission requests the Postal Service to provide, no later than August 24, 2012, its EMS Cooperative Report Cards, including performance measurements, for calendar year 2011.

Proceedings. The Commission establishes Docket No. CP2012-52 for consideration of matters raised by the instant Notice. Pursuant to 39 U.S.C. 505, it appoints James F. Callow to serve as officer of the Commission (Public Representative) representing the interests of the general public in these proceedings.

Interested persons may submit comments on whether the changes announced in the Notice are consistent with the requirements of 39 U.S.C. 3633(a)(2) and 39 U.S.C. 3632(b)(3) and related Commission rules. Comments are due no later than August 23, 2012. Comments are to be submitted via the Commission's Filing Online system at <http://www.prc.gov> unless a waiver is obtained. Information on how to obtain a waiver may be obtained by contacting the Commission's docket section at 202-789-6846.

It is ordered:

1. The Commission establishes Docket No. CP2012-52 for consideration of the Notice of the United States Postal Service of Filing Changes in Rates not of General Applicability and Application for Non-public Treatment of Materials Filed Under Seal, filed August 13, 2012.

2. The Commission requests the Postal Service to provide the Postal Service's EMS Cooperative Report Cards, including performance measurements, for calendar year 2011 no later than August 24, 2012.

3. Pursuant to 39 U.S.C. 505, the Commission appoints James F. Callow as Public Representative in this proceeding.

4. Comments are due no later than August 27, 2012.

5. The Secretary shall arrange for publication in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012-20650 Filed 8-21-12; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012-44; Order No. 1435]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request for two related changes to the product lists. The changes involve removing one product from the market dominant product list and adding a nearly identical product to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* August 24, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Notice of filing. The Commission hereby provides notice that on August 10, 2012, the Postal Service file a Request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* seeking two related changes to the product lists.¹ The requested changes would (1) remove Outbound Single-Piece First-Class Mail International Packages (Small Packets) and Rolls from the market dominant product list; and (2) add "First-Class Package International Service™" (FCPIS), which the Postal Service characterizes as a nearly identical product, to the competitive product list. Outbound Single-Piece First-Class Mail International Letters, Postcards, and Large Envelopes (flats)

¹ Request of the United States Postal Service to Transfer Outbound Single-Piece First-Class Mail International Packages and Rolls to the Competitive Product List, August 10, 2012 (Request). The Postal Service seeks Commission action on the instant Request by September 10, 2012 to facilitate the anticipated mid-September 2012 filing of a notice of market-dominant price adjustment. *Id.* at 3.

would remain on the market dominant list.

Product description. The Postal Service describes First-Class Mail International Packages and Rolls as parcel shipping products that compete in a vibrant marketplace with private sector enterprises, such as FedEx, DHL and UPS. *Id.* at 2. It asserts that although these items are currently classified on the market dominant product list, they fulfill all of the criteria for competitive products under 39 U.S.C. 3642. *Id.* The Postal Service also provides other observations in support of the proposed changes, including the Commission's approval of the transfer of Parcel Post to the competitive product list in Docket No. MC2012-13. *Id.*

Public documents. The Request includes the following supporting publicly-available material:

- Attachment A—a copy of Governors' Resolution No.12-08, adopted August 8, 2012, authorizing the Request;
- Attachment B—a Statement of Supporting Justification addressing applicable rule 3020.32 requirements; and
- Attachment C—proposed Mail Classification Schedules.

Non-public documents. In contemporaneous Notices, the Postal Service announced the filing of two library references as non-public documents. One provides disaggregated cost, volume and revenue data; the other presents market research.² The Notices include applications for non-public treatment.

Proceedings. The Commission establishes Docket No. MC2012-44 for consideration of the instant Request. Interested persons may submit comments on whether the Request is consistent with the policies of 39 U.S.C. 3642 and 3633 and 39 CFR 3020.30. Comments are due no later than August 24, 2012. Reply comments, if any, are due August 31, 2012. Comments are to be filed via the Commission's Filing Online system at <http://www.prc.gov> unless a waiver is obtained. Information on how to obtain a waiver is available from the Commission's docket section at 202-789-6846.

James F. Callow is designated as the Public Representative to represent the interest of the general public in this matter.

It is ordered:

² See United States Postal Service Notice of Filing Library Reference USPS-LR-MC2012-44/NP1 and Application for Non-public Treatment and United States Postal Service Notice of Filing Library Reference USPS-LR-MC2012-44/NP2 and Application for Non-public Treatment (both filed August 10, 2012).

1. The Commission establishes Docket No. MC2012-44 for consideration of the Request of the United States Postal Service to Transfer Outbound Single-Piece First-Class Mail International Packages and Rolls to the Competitive Product List, filed August 10, 2012.

2. Pursuant to 39 U.S.C. 505, the Commission appoints James F. Callow (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due by August 24, 2012.

4. Reply comments are due August 31, 2012.

5. The Secretary shall arrange for the publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012-20623 Filed 8-21-12; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67599A; File No. SR-DTC-2012-03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Implement a Change in the Practices of The Depository Trust Company as They Relate to Post-Payable Adjustments; Correction

August 16, 2012.

AGENCY: Securities And Exchange Commission.

ACTION: Notice; correction.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** of August 10, 2012, concerning a Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Implement a Change in the Practices of The Depository Trust Company as They Relate to Post-payable Adjustments; The request for comment information was inadvertently omitted from the document.

FOR FURTHER INFORMATION CONTACT: Kenneth Riitho, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551-5592.

Correction

The following language is added to the end of section III above the third line from the bottom of the second column in the document published in the **Federal Register** of August 10, 2012, in FR Doc. 2012-19579:

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 (www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-DTC-2012-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2012-03. 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 (www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of the filing also will be available for inspection and copying at the principal office of the DTC. 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-DTC-2012-03 and should

be submitted on or before August 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority (17 CFR 200.30-3(a)(12)).

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012-20577 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67650; File No. SR-CME-2012-22]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Rules To Facilitate Customer Portfolio Margining of Interest Rate Futures and Interest Rate Swaps

August 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 7, 2012, the Chicago Mercantile Exchange, Inc. ("CME") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I and II, below, which Items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule changes from interested persons, and to approve the proposed rule changes on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to amend rules related to its interest rate swaps ("IRS") and interest rate futures clearing offerings by establishing a portfolio margining program for customer portfolios containing IRS and interest rate futures positions. The text of the proposed rule changes is available on the CME's Web site at <http://www.cmegroup.com>, at the principal office of CME, 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, CME included statements concerning the purpose of and basis for the proposed rule changes and discussed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

any comments it received on the proposed rule changes. The text of these statements and comments may be examined at the places specified in Item III below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.³

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose of the Proposed Rule Change

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission ("CFTC"), and currently operates a substantial business clearing both IRS and interest rate futures contracts. The changes that are the subject of this filing are proposed rules that would establish a portfolio margining program for customer portfolios containing cleared IRS and interest rate futures positions. More specifically, the proposed rule amendments consist of revisions to CME Rule 8G831 (Commingling of Eligible Futures and Swaps Positions) and certain corresponding changes to the CME IRS Clearing House Manual of Operations.

CME believes the rule changes will benefit customers and the overall derivatives markets by: (1) Enabling customers who clear trades through CME to obtain the benefit of margin offsets between interest rate futures and IRS, thus reducing their trading costs and allowing for more efficient capital usage; (2) improving the efficiency and effectiveness of risk management; and (3) encouraging greater utilization of clearing, thereby facilitating systemic risk reduction.

CME notes that it has also submitted the proposed rule changes that are the subject of this filing to its primary regulator, the CFTC, in CME Submission 12-151, and is awaiting the CFTC's approval for the proposal.⁴ As described below, CME believes there is good cause for the Commission to grant approval for the proposed rule changes on an accelerated basis by August 31, 2012 to ensure the proposed rule changes can be implemented immediately when CFTC approval is obtained.

³ The Commission has modified the text of the summaries provided by CME.

⁴ CFTC rules permit self-regulatory organizations like CME voluntarily to request approval of proposed rule changes. See 17 CFR 40.5.

a. CME's Proposed Portfolio Margining Program for Eligible Interest Rate Futures Products and IRS; Commingling of Related Positions

CME has considerable experience clearing and managing the risks of interest rate futures, and has been clearing IRS since October 2010. CME notes that it previously implemented a portfolio margining program for interest rate futures and IRS products in proprietary or "house" accounts of clearing member firms.⁵

i. Eligible Products

CME's IRS offering currently includes seven currencies—viz., USD, EUR, GBP, CAD, AUD, JPY, and CHF—each with varying contract attributes. CME identified the following interest rate futures that will initially be eligible for commingling with IRS in CFTC 4d(f) accounts (*i.e.*, customer cleared swaps accounts): Eurodollar Futures and Treasury Futures, including U.S. Treasury Bonds and 2-, 5- and 10-Year Treasury Notes. These particular futures products were identified as eligible for commingling based on their exposure to similar or correlated risk factors as IRS, thus allowing for margin offsets. In accordance with the proposed amendments to Rule 8G831, interest rate futures may be commingled with IRS in 4d(f) accounts only if the futures are risk reducing.

ii. Clearing Firm Eligibility

To be permitted to commingle interest rate futures and IRS under CME's program, a clearing firm must be a futures commission merchant ("FCM") registered with the CFTC and an IRS clearing member of CME, and it must also be a clearing member of CME, the Chicago Board of Trade ("CBOT"), or both in order to clear interest rate futures. FCM clearing members must also satisfy minimum regulatory capital requirements under applicable law (including CFTC regulations and CME/CBOT rules) and must also be in compliance with CME's operational and risk-management rules and requirements for IRS and CME/CBOT clearing members.

iii. Margin Methodology

Pursuant to the proposed changes to CME Rule 8G831, interest rate futures residing with IRS in CFTC 4d(f) accounts held at CME will be subject to the margin model developed by CME for IRS. This model is based on an Historical Value at Risk (HVaR)

methodology with Exponentially Weighted Moving Average (EWMA) volatility forecasting. CME's margin model for IRS covers at least 99 percent of potential losses over any five-day period in a large universe of portfolios, covering 99 percent of market moves.

HVaR was selected both for its scalability across multiple currencies and its transparency to market participants: it is a standard, well understood model and is easily replicable. CME has enhanced the multi-currency HVaR model to address risks arising from rate risk and foreign exchange conversion risks. The model is designed to mitigate the rate risks created by additional currencies, correlated yield curves, and differing liquidity profiles. The model also takes into account foreign exchange conversion rates and their implication on collateral liquidation for multi-currency losses. In addition, the HVaR model provides margin offsets for multi-currency portfolios.

iv. Default Scenarios

CME has considered issues involved with the default of a clearing member and/or the default by one or more of a clearing member's cleared swaps customers with a commingled account. Because the commingled positions would reside in CFTC 4d(f) accounts, these customer commingled interest rate futures and IRS (and collateral associated therewith) would be part of the customer "cleared swaps" account class under the CFTC's Part 190 Bankruptcy Rules. This means these positions would be treated in accordance with the CFTC's Part 22 regulations providing for legal segregation of customer funds with operational commingling, which become effective on November 8, 2012.

Any default by an IRS clearing member—including a default involving customer commingled positions—would also be governed by CME's rules and default management procedures for IRS (including CME Rules 8G802, 8G814, and 8G975). These rules and procedures are based on input from IRS clearing members and market participants, as well as CME's depth of default management experience from many years as a derivatives clearing house. CME's default management rules and procedures are reviewed and updated as circumstances warrant. CME Clearing makes these updates in consultation with the CME IRS Risk Committee and the CME IRS Default Management Committee.

⁵ See SR-CME-2012-05, Securities Exchange Act Release No. 34-66641 (Mar. 21, 2012), 77 FR 18288 (Mar. 27, 2012).

2. Statutory Basis

CME believes the proposed rule changes are consistent with the requirements of the Act, including Section 17A,⁶ and the rules and regulations thereunder applicable to CME. CME observes that the proposed rule changes involve improvements and efficiencies that are related to CME's interest rate futures and swap product offerings for investors. Accordingly, CME believes the proposed rule changes will benefit customers in the following ways: (i) By enabling customers who clear trades through CME to obtain the benefit of margin offsets between interest rate futures and IRS, thus reducing their trading costs and allowing for more efficient capital usage; (ii) by improving the efficiency and effectiveness of risk management; and (iii) by encouraging greater utilization of clearing, thereby facilitating systemic risk reduction. CME contends that the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions; to assure the safeguarding of securities and funds that are in CME's custody or control; and, in general, to help to protect investors and the public interest.

Furthermore, CME points out that the proposed rule changes are limited to the clearing of futures and swaps, and thus relate solely to CME's futures and swaps clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act ("CEA"). CME thus asserts that the proposed rule changes do not significantly affect any of CME's securities clearing operations or any related rights or obligations of CME or persons using such service. CME notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions, and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule changes will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding these proposed rule changes. CME has not received any unsolicited written comments from interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or by sending an email to rule-comments@sec.gov. Please include File No. SR-CME-2012-22 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CME-2012-22. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of CME. 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-CME-2012-22 and should be submitted on or before September 12, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act⁷ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission concludes that the proposed rule changes are consistent with the requirements of the Act, in particular with the requirements of Section 17A of the Act,⁸ and the rules and regulations thereunder applicable to CME. In particular, the Commission concludes that the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act,⁹ which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts and transactions. It is the Commission's view that the proposed rule changes should allow CME to enhance its services in clearing IRS and interest rate futures products, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts and transactions.

In its filing, CME requested that the Commission approve these proposed rule changes on an accelerated basis, so they can become effective prior to August 31, 2012. CME has articulated three reasons for granting its request for accelerated approval. One, the products covered by this filing, and CME's operations as a derivatives clearing organization for such products, are regulated by the CFTC under the CEA. Two, the proposed rule changes affect the IRS swaps and interest rate futures that CME clears, and therefore relate solely to its swaps and futures clearing activities, and do not significantly relate to CME's functions as a clearing agency for security-based swaps. Three, CME believes the rules will benefit customers and the overall derivatives markets in the following ways: (i) By enabling customers who clear trades through CME to obtain the benefit of margin offsets between interest rate futures and IRS, thus reducing their trading costs and allowing for more efficient capital usage; (ii) by improving the efficiency and effectiveness of risk management;

⁷ 15 U.S.C. 78s(b).

⁸ 15 U.S.C. 78q-1. In approving these proposed rule changes, the Commission has considered the proposed rule changes' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78q-1.

and (iii) by encouraging greater utilization of clearing, thereby facilitating systemic risk reduction. CME contends that, as a result, the proposed rule changes will help to protect investors and the public interest.

The Commission concludes that there is good cause, pursuant to Section 19(b)(2) of the Act,¹⁰ for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice in the **Federal Register** because: (i) The proposed rule changes do not significantly affect any of CME's securities clearing operations (whether in existence or contemplated by its rules) or any related rights or obligations of CME or persons using such service; and (ii) the activity relating to CME's non-security clearing operations for which CME is seeking approval is subject to regulation by another federal regulator.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-CME-2012-22) be, and hereby is, APPROVED on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-20566 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67664; File No. SR-NYSEMKT-2012-10]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving a Proposed Rule Change Amending the NYSE MKT Price List To Provide for Additional Co-Location Services and Establish Related Fees

August 15, 2012.

I. Introduction

On June 13, 2012, NYSE MKT LLC ("NYSE MKT" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the NYSE MKT Price List to provide for additional co-location services and establish related fees. The

proposed rule change was published for comment in the **Federal Register** on July 2, 2012.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange provides co-location services to Users from a data center in Mahwah, New Jersey.⁴ The Exchange's co-location services allow Users to rent space in the data center so that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution system.⁵ The Exchange proposes to make multiple changes to provide for additional co-location services and establish related fees.

Cabinet Cross Connects

Currently the Exchange allows Users with more than one cabinet within the data center to purchase one or more fiber cross connects between its cabinets. The Exchange proposes that each User be permitted to purchase cross connects between its own cabinets, as is currently permitted, as well as between its cabinet(s) and the cabinets of separate Users within the data center.⁶ A cross connect between Users could be requested in order to receive technical support, order routing and/or market data delivery services from another User. In addition, the Exchange proposes to bundle cross connects such that a single sheath can hold either one cross connect or several cross connects in multiples of six (e.g., six, twelve, eighteen or twenty-four cross connects). The Exchange proposes to charge a \$500 initial fee for either single or bundled cross connects and a monthly charge contingent upon the number of cross connects established.⁷

³ See Securities Exchange Act Release No. 67261 (June 26, 2012), 77 FR 39309 ("Notice").

⁴ See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80).

⁵ For purposes of its co-location services, the term "User" includes (i) member organizations, as that term is defined in Rule 2(b)—Equities; (ii) Sponsored Participants, as that term is defined in Rule 123B.30(a)(ii)(B)—Equities; and (iii) non-member organization broker-dealers and vendors that request to receive co-location services directly from the Exchange.

⁶ The Exchange notes that only the User requesting the cross connect would be charged the related initial and monthly fees; the counterparty User would simply be required to give permission for the cross connection.

⁷ The Exchange proposes to charge \$500 monthly to furnish and install one cross connect between cabinets. For a bundle of six cross connects, the monthly charge would be \$1,500; 12 cross connects would be \$2,500 per month; 18 cross connects would be \$3,200 per month; and 24 cross connects would be \$3,900 per month.

10 Gb LCN Connections

Users are currently able to purchase access to the Exchange's Liquidity Center Network ("LCN"), a local area network available in the data center, in either one or ten gigabit ("Gb") capacities, for which Users incur an initial and monthly fee per connection. The Exchange proposes that a User that purchases five 10 Gb LCN connections would only be charged the initial fee for a sixth 10 Gb LCN connection and would not be charged the monthly fee that would otherwise be applicable.

LCN CSP Connections

A User may act as a content service provider (a "CSP User") and deliver services to another User in the data center (a "Subscribing User"), such as order routing or market data delivery services. The services can be provided either via direct cross connect between the CSP User and Subscribing Users; or in addition, CSP Users can send data to, and communicate with, all their properly authorized Subscribing Users at once, via a dedicated LCN Connection (an "LCN CSP" connection). The Exchange proposes an initial connection fee for CSP Users establishing a LCN CSP connection as well as a monthly charge depending on whether the connection is a 1 or 10 Gb circuit. The Subscribing User receives the services via its standard LCN connection and is charged an initial and monthly fee that reflects the benefit of receiving services in this manner.⁸

Cages

A User may purchase a cage to house its cabinets within the data center. The Exchange charges fees for cages based on the size of the cage, which corresponds to the number of cabinets housed therein. The Exchange is proposing the following fees for cages:

- For 1-14 cabinets, a \$5,000 initial charge plus \$2,700 monthly charge;
- For 15-28 cabinets, a \$10,000 initial charge plus \$4,100 monthly charge; and
- For 29 cabinets or more, a \$15,000 initial charge plus \$5,500 monthly charge.

Change Fee

A User may arrange for the Exchange to reconfigure, modify, or otherwise change a co-location service that the Exchange has already established for the User. The Exchange proposes to charge

⁸ For a CSP User, a 1Gb Circuit for a LCN CSP connection has a \$6,000 connection charge plus a \$500 monthly fee. A 10Gb Circuit for a LCN CSP connection has a \$10,000 initial connection charge plus a \$5,000 monthly fee. A CSP Subscriber has an initial charge of \$950 plus a \$300 monthly fee per LCN CSP.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

a User a fee of \$950 per order if the User requests a change to one or more existing co-location services.⁹

Expedite Fee

A User may request that the Exchange expedite the completion of co-location services purchased or ordered by the User. The Exchange proposes to charge Users \$4,000 for expedited completion of co-location services.

Power Not Utilized Cabinet

A User may obtain unused cabinet space that the User intends to employ in the future in proximity to the User's existing cabinet space. The Exchange proposes to charge a fee for this cabinet space, in which the power is not utilized, of \$360 per month.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In offering co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment costs, and costs related to personnel required for installation and ongoing support. The Exchange has represented that the fees charged are designed to defray expenses incurred or resources expended by the Exchange.¹³ For example, the Exchange

proposes to charge the same \$500 connection fee for installing either a single cross connect or a bundled cross connect because the cost to the Exchange is generally equivalent. With regard to the cages offered by the Exchange, the initial and monthly cost increases in correlation to the size of the cage and how many cabinets it needs to contain because its size represents the opportunity cost of not using that space to sell additional cabinets, or for other Exchange purposes. In a similar vein, the expedite fee proposed corresponds to the additional Exchange resources needed to expedite customer requests, including the potential need for overtime compensation for data center staff. Respecting LCN CSP connections, the Exchange charges the same initial fee as for a standard LCN connection since the connection is physically the same, but the monthly fee is lower because LCN CSP connections are functionally limited in comparison to the standard LCN connection.¹⁴ Additionally, the Exchange represents that there is no differentiation among Users regarding the fees charged for a particular product, service or piece of equipment. In light of the Exchange's representations, the Commission believes that the co-location fees proposed are consistent with Section 6(b)(4) and 6(b)(5) of the Exchange Act.

The Exchange is offering additional co-location services as a convenience to Users. For instance, the cross connects and LCN CSP connections provide Users within the data center with another alternative to transmit data or provide services, such as order routing or market data delivery services. The cages offered to Users can help prevent the discovery of the hardware employed by Users for co-location. As noted by the Exchange, these additional co-location services are available to all Users on an equal basis. The Commission believes that these additional services are also consistent with Section 6(b)(5) of the Exchange Act, as they are designed to remove impediments to and perfect the mechanism of a free and open market and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSEMKT-2012-10) be, and it hereby is, approved.

¹⁴ A LCN CSP connection may only be used for providing services to Subscribing Users and may not be used for other purposes, such as accessing the Exchange.

¹⁵ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-20567 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67665; File No. SR-NYSEMKT-2012-11]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving a Proposed Rule Change Amending the NYSE Amex Options Fee Schedule To Provide for Additional Co-location Services and Establish Related Fees

August 15, 2012.

I. Introduction

On June 13, 2012, NYSE MKT LLC ("NYSE MKT" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the NYSE Amex Options Fee Schedule to provide for additional co-location services and establish related fees. The proposed rule change was published for comment in the **Federal Register** on July 2, 2012.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange provides co-location services to Users from a data center in Mahwah, New Jersey.⁴ The Exchange's co-location services allow Users to rent space in the data center so that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution system.⁵ The Exchange proposes to make multiple changes to provide for additional co-

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67260 (June 26, 2012), 77 FR 39288 ("Notice").

⁴ See Securities Exchange Act Release No. 63274 (November 8, 2010), 75 FR 69722 (November 15, 2010) (SR-NYSEAmex-2010-101).

⁵ For purposes of its co-location services, the term "User" includes (i) "ATP Holders," as that term is defined in Rule 900.2NY(5); (ii) Sponsored Participants, as that term is defined in Rule 900.2NY(77); and (iii) non-ATP Holder broker-dealers and vendors that request to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 65975 (December 15, 2011), 76 FR 79233 (December 21, 2011) (SR-NYSEAmex-2011-82).

⁹ If a User orders two or more services at one time, the User would be charged a one-time Change Fee of \$950, which would cover the multiple services.

¹⁰ 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).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

¹³ See Notice *supra* note 3.

location services and establish related fees.

Cabinet Cross Connects

Currently the Exchange allows Users with more than one cabinet within the data center to purchase one or more fiber cross connects between its cabinets. The Exchange proposes that each User be permitted to purchase cross connects between its own cabinets, as is currently permitted, as well as between its cabinet(s) and the cabinets of separate Users within the data center.⁶ A cross connect between Users could be requested in order to receive technical support, order routing and/or market data delivery services from another User. In addition, the Exchange proposes to bundle cross connects such that a single sheath can hold either one cross connect or several cross connects in multiples of six (e.g., six, twelve, eighteen or twenty-four cross connects). The Exchange proposes to charge a \$500 initial fee for either single or bundled cross connects and a monthly charge contingent upon the number of cross connects established.⁷

10 Gb LCN Connections

Users are currently able to purchase access to the Exchange's Liquidity Center Network ("LCN"), a local area network available in the data center, in either one or ten gigabit ("Gb") capacities, for which Users incur an initial and monthly fee per connection. The Exchange proposes that a User that purchases five 10 Gb LCN connections would only be charged the initial fee for a sixth 10 Gb LCN connection and would not be charged the monthly fee that would otherwise be applicable.

LCN CSP Connections

A User may act as a content service provider (a "CSP User") and deliver services to another User in the data center (a "Subscribing User"), such as order routing or market data delivery services. The services can be provided either via direct cross connect between the CSP User and Subscribing Users; or in addition, CSP Users can send data to, and communicate with, all their properly authorized Subscribing Users at once, via a dedicated LCN Connection

(an "LCN CSP" connection). The Exchange proposes an initial connection fee for CSP Users establishing a LCN CSP connection as well as a monthly charge depending on whether the connection is a 1 or 10 Gb circuit. The Subscribing User receives the services via its standard LCN connection and is charged an initial and monthly fee that reflects the benefit of receiving services in this manner.⁸

Cages

A User may purchase a cage to house its cabinets within the data center. The Exchange charges fees for cages based on the size of the cage, which corresponds to the number of cabinets housed therein. The Exchange is proposing the following fees for cages:

- For 1–14 cabinets, a \$5,000 initial charge plus \$2,700 monthly charge;
- For 15–28 cabinets, a \$10,000 initial charge plus \$4,100 monthly charge; and
- For 29 cabinets or more, a \$15,000 initial charge plus \$5,500 monthly charge.

Change Fee

A User may arrange for the Exchange to reconfigure, modify, or otherwise change a co-location service that the Exchange has already established for the User. The Exchange proposes to charge a User a fee of \$950 per order if the User requests a change to one or more existing co-location services.⁹

Expedite Fee

A User may request that the Exchange expedite the completion of co-location services purchased or ordered by the User. The Exchange proposes to charge Users \$4,000 for expedited completion of co-location services.

Power Not Utilized Cabinet

A User may obtain unused cabinet space that the User intends to employ in the future in proximity to the User's existing cabinet space. The Exchange proposes to charge a fee for this cabinet space, in which the power is not utilized, of \$360 per month.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the

Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In offering co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment costs, and costs related to personnel required for installation and ongoing support. The Exchange has represented that the fees charged are designed to defray expenses incurred or resources expended by the Exchange.¹³ For example, the Exchange proposes to charge the same \$500 connection fee for installing either a single cross connect or a bundled cross connect because the cost to the Exchange is generally equivalent. With regard to the cages offered by the Exchange, the initial and monthly cost increases in correlation to the size of the cage and how many cabinets it needs to contain because its size represents the opportunity cost of not using that space to sell additional cabinets, or for other Exchange purposes. In a similar vein, the expedite fee proposed corresponds to the additional Exchange resources needed to expedite customer requests, including the potential need for overtime compensation for data center staff. Respecting LCN CSP connections, the Exchange charges the same initial fee as for a standard LCN connection since the connection is physically the same, but the monthly fee is lower because LCN CSP connections are functionally limited in comparison to

⁶ The Exchange notes that only the User requesting the cross connect would be charged the related initial and monthly fees; the counterparty User would simply be required to give permission for the cross connection.

⁷ The Exchange proposes to charge \$500 monthly to furnish and install one cross connect between cabinets. For a bundle of six cross connects, the monthly charge would be \$1,500; 12 cross connects would be \$2,500 per month; 18 cross connects would be \$3,200 per month; and 24 cross connects would be \$3,900 per month.

⁸ For a CSP User, a 1Gb Circuit for a LCN CSP connection has a \$6,000 connection charge plus a \$500 monthly fee. A 10Gb Circuit for a LCN CSP connection has a \$10,000 initial connection charge plus a \$5,000 monthly fee. A CSP Subscriber has an initial charge of \$950 plus a \$300 monthly fee per LCN CSP.

⁹ If a User orders two or more services at one time, the User would be charged a one-time Change Fee of \$950, which would cover the multiple services.

¹⁰ 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).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

¹³ See Notice *supra* note 3.

the standard LCN connection.¹⁴ Additionally, the Exchange represents that there is no differentiation among Users regarding the fees charged for a particular product, service or piece of equipment. In light of the Exchange's representations, the Commission believes that the co-location fees proposed are consistent with Section 6(b)(4) and 6(b)(5) of the Exchange Act.

The Exchange is offering additional co-location services as a convenience to Users. For instance, the cross connects and LCN CSP connections provide Users within the data center with another alternative to transmit data or provide services, such as order routing or market data delivery services. The cages offered to Users can help prevent the discovery of the hardware employed by Users for co-location. As noted by the Exchange, these additional co-location services are available to all Users on an equal basis. The Commission believes that these additional services are also consistent with Section 6(b)(5) of the Exchange Act, as they are designed to remove impediments to and perfect the mechanism of a free and open market and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSEMKT-2012-11) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-20568 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67673; File No. SR-NSCC-2012-06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance the Default Pricing Methodology Used by NSCC's Automated Customer Account Transfer Service

August 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

¹⁴ A LCN CSP connection may only be used for providing services to Subscribing Users and may not be used for other purposes, such as accessing the Exchange.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on August 7, 2012, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by NSCC. 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 proposed rule change involves Rule 50 of NSCC's Rules and Procedures. NSCC proposes to amend this rule to eliminate the use of a default pricing matrix to assign values to certain items transferred through NSCC's Automated Customer Account Transfer Service ("ACATS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements and comments may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.³

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Background

ACATS enables NSCC Members to effect automated transfers of customer accounts among themselves.⁴ Pursuant to Rule 50, an NSCC Member to whom a customer's full account will be transferred ("Receiving Member") will initiate the transfer by submitting to NSCC a transfer initiation request, which contains the customer detail information that the NSCC Member in possession of the account ("Delivering Member") requires in order to transfer

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission has modified the text of the summaries provided by NSCC.

⁴ ACATS complements Financial Industry Regulatory Authority ("FINRA") Rule 11870 regarding Customer Account Transfers, which requires FINRA members to use automated clearing agency customer account transfer services, and to effect customer account transfers within specified time frames.

the account. Delivering Members that have neither rejected the account transfer request nor sought corrections to the request within the allotted time must submit to NSCC certain detailed customer account asset data.

For items transferred through ACATS that are not eligible to be processed through NSCC's Continuous Net Settlement ("CNS") system⁵ (and for CNS-eligible items that are designated to be delivered ex-CNS), NSCC will produce ACATS Receive and Deliver Instructions. These ACATS transfers then settle either outside of NSCC or through a separate service at NSCC.⁶ In order to incentivize the timely completion of ACATS transfers, at the start of the day on ACATS settlement date, the Delivering Member's NSCC money settlement account will include a debit, or an incentive charge ("Incentive Charge"), equal to the aggregate market value of the items the Delivering Member is transferring through ACATS; the Receiving Member's NSCC money settlement account includes a credit in the same amount.⁷ Once delivery of an item is complete, the Incentive Charge associated with that item is effectively offset when the Receiving Member pays the Delivering Member for the transferred items. This Incentive Charge is intended to encourage the Delivering Member to make delivery of the item in a timely manner.⁸

Each item transferred through ACATS must be assigned a market value in order to calculate the Incentive Charge. CNS-eligible items being transferred through ACATS are assigned a market

⁵ CNS is an ongoing accounting system that nets today's Settling Trades with yesterday's Closing Positions, producing net short or long positions per security issue for each Member. NSCC is always contraside for all positions. The positions are then passed against the Member's Designated Depository positions and available securities are allocated by book entry. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions that remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. To allocate deliveries in both the night and day cycles, CNS uses an algorithm based on priority groups in descending order, age of position within a priority group, and random numbers within age groups.

⁶ For example, non-CNS ACATS may settle at (i) The Depository Trust Company ("DTC"), for DTC-eligible items; (ii) NSCC's automated ACATS-Fund/SERV interface, for eligible mutual fund assets; (iii) NSCC's ACATS-IPS interface, for eligible annuities; and (iv) the Options Clearing Corporation, where transfers in customer-options positions take place, for options.

⁷ Incentive Charges are not calculated for the transfer of options or annuities.

⁸ It also allows the Receiving Member to record the customer position on its books, regardless whether the item is actually delivered on settlement date. This process supports the requirements of FINRA Rule 11870.

value through the CNS system. Non-CNS eligible items, however, are assigned a market value pursuant to NSCC Rule 50, which calls for a market value based on either (i) the price obtained from a pricing source, if available or, if a pricing source is not available, (ii) the greater of (a) the price in U.S. dollars assigned by the Delivering Member ("Submitter's Value"), which, in most cases, must be the current market value of the item,⁹ or (b) the value ascribed to such item pursuant to a default pricing matrix, as established from time to time by NSCC. The current default pricing matrix assigns a value to an item based on its "asset category type," as classified by the Delivering Member in the detailed customer account asset data submitted to NSCC. For example, the current default pricing matrix assigns equities a default price of \$1 per share, with a cap of \$20,000, and assigns U.S. government securities and U.S. government agency securities a default price of the face amount. The default pricing matrix was developed in close coordination with industry participants and the National Association of Securities Dealers shortly after the initial development of ACATS.

It has been observed that the default pricing matrix may, in some cases, overvalue items being transferred through ACATS. When this occurs, on ACATS settlement date the Delivering Member will be debited an Incentive Charge based on a higher market value than the actual value of the item being transferred. Delivering Members will not receive the offset for this Incentive Charge until they deliver the related ACATS item. Therefore, a Delivering Member that does not deliver the ACATS item on ACATS settlement date will be required to pay the Incentive Charge associated with that item. If the default pricing matrix has overvalued an ACATS Incentive Charge, a Delivering Member that has failed to deliver the item will be faced with an unexpected inflated settlement charge on ACATS settlement date.

2. Proposed Rule Change

In order to reduce the risk of overcharging a Delivering Member, NSCC is proposing a rule change that will require NSCC to assign the Submitter's Value to items when the system cannot otherwise find a price for the security, thereby eliminating the use

⁹ See Section (d)(5)(A) of current FINRA Rule 11870, stating that a customer statement delivered in connection with a transfer instruction, "must include a then-current market value for all assets so indicated. If a then-current market value for an asset cannot be determined (e.g., a limited partnership interest), the asset must be valued at original cost."

of the ACATS default pricing matrix altogether. Under the proposed rule change, in the case of non-CNS eligible items transferred through ACATS, NSCC will assign a market value to those items as either (i) the price obtained from a pricing source, if available or, if a pricing source is not available, the assigned market value will be (ii) the price in U.S. dollars assigned by the Delivering Member (i.e., the Submitter's Value), which, in most cases, must be the current market value of the security.¹⁰

According to NSCC, this proposed rule change will reduce the risk that a non-CNS eligible item transferred through ACATS is assigned an inflated value based on its asset category, as it will require that the market value of these items be obtained either from a pricing source or from the Delivering Member.

3. Statutory Basis for Proposed Rule Change

NSCC believes the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, a policy underlying ACATS. As a result, it is NSCC's view that the proposal is consistent with the requirements of the Act¹¹ and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register**, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed 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 may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or by sending an email to rule-comments@sec.gov. Please include File No. SR-NSCC-2012-06 on the subject line.

- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NSCC-2012-06. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at: http://www.dtcc.com/downloads/legal/rule_filings/2012/nsc/SR-NSCC-2012-06.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NSCC-2012-06 and should be submitted on or before September 12, 2012.

¹⁰ See note 9, *supra*.

¹¹ 15 U.S.C. 78s(b)(1).

¹² 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-20576 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67678; File No. SR-NASDAQ-2012-094]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove the Expired Pilot Under Rule 4753(c) From the NASDAQ Rule Book

August 16, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 3, 2012, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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

NASDAQ proposes to remove the expired pilot under Rule 4753(c) (the “Volatility Guard”) from the NASDAQ rule book. NASDAQ will remove the rule text 30 days after the filing date of this proposal.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

4753. Nasdaq Halt and Imbalance Crosses

(a)–(b) No change.
(c) *Reserved.* [For a pilot period ending the earlier of July 31, 2012 or the date on which, if approved, a limit up/limit down mechanism to address extraordinary market volatility, is approved, between 9:30 a.m. and 3:35 p.m. EST, the System will automatically monitor System executions to determine whether the market is trading in an orderly fashion and whether to conduct an Imbalance Cross in order to restore

an orderly market in a single Nasdaq Security.

(1) An Imbalance Cross shall occur if the System executes a transaction in a Nasdaq Security at a price that is beyond the Threshold Range away from the Triggering Price for that security. The Triggering Price for each Nasdaq Security shall be the price of any execution by the System in that security within the prior 30 seconds. The Threshold Range shall be determined as follows:

Execution price	Threshold range away from triggering price (percent)
\$1.75 and under	15
Over \$1.75 and up to \$25	10
Over \$25 and up to \$50	5
Over \$50	3

(2) If the System determines pursuant to subsection (1) above to conduct an Imbalance Cross in a Nasdaq Security, the System shall automatically cease executing trades in that security for a 60-second Display Only Period. During that 60-second Display Only Period, the System shall:

- (A) Maintain all current quotes and orders and continue to accept quotes and orders in that System Security; and
- (B) Disseminate by electronic means an Order Imbalance Indicator every 5 seconds.

(3) At the conclusion of the 60-second Display Only Period, the System shall re-open the market by executing the Nasdaq Halt Cross as set forth in subsection (b)(2)–(4) above.

(4) If the opening price established by the Nasdaq Halt Cross pursuant to subsection (b)(2)(A)–(D) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Halt Cross will occur at the price within the threshold amounts that best satisfies the conditions of subparagraphs (b)(2)(A) through (D) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.]

(d) No change.
* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to remove the expired pilot under Rule 4753(c) from the rule book. On June 18, 2010, NASDAQ filed a rule change for Commission approval, proposing to adopt Volatility Guard as a six month pilot in 100 NASDAQ-listed securities.³ NASDAQ proposed implementing the Volatility Guard pilot as a means to address aberrant trading volatility on the Exchange, in part, as a response to the unprecedented aberrant volatility witnessed on May 6, 2010 and the limited effect that NASDAQ’s market collars had in dampening such volatility.

On March 11, 2011, the Commission approved the Volatility Guard. Important to its subsequent determination to hold the implementation of Volatility Guard in abeyance, NASDAQ notes that the Commission stated in approving Volatility Guard that it may find exchange-specific volatility moderators inconsistent with the Act once a uniform, cross-market mechanism to address aberrant volatility is adopted. Specifically, the Commission stated:

[T]hat it is continuing to work diligently with the exchanges and FINRA to develop an appropriate consistent cross-market mechanism to moderate excessive volatility that could be applied widely to individual exchange-listed securities and to address commenters’ concerns regarding the complexity and potential confusion of exchange-specific volatility moderators. To the extent the Commission approves such a mechanism, whether it be an expanded circuit breaker with a limit up/limit down feature or otherwise, *the Commission may no longer be able to find that exchange-specific volatility moderators—including both Nasdaq’s Volatility Guard and the NYSE’s LRPs—are consistent with the Act.*⁴

During the time that the Volatility Guard pilot was progressing through the notice and comment process with the Commission, NASDAQ together with the other national securities exchanges and FINRA (“SROs”) and in

³ Securities Exchange Act Release No. 64071 (March 11, 2011), 76 FR 14699 (March 17, 2011) (SR-NASDAQ-2010-074). The proposal was amended to identify the 100 pilot securities as the securities comprising NASDAQ 100 Index. See Amendment 1 to SR-NASDAQ-2010-074.

⁴ *Id.* at 14701 (*emphasis added*).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

consultation with the Commission, worked diligently to implement changes to the markets to prevent another event like May 6, 2010 from occurring. One such joint effort was a proposed limit up/limit down mechanism to replace the single stock circuit breaker pilots currently in place. On April 5, 2011, the SROs filed with the Commission a national market system plan to address extraordinary market volatility, which proposed a market-wide limit up/limit down mechanism applicable to all NMS stocks (the “Plan”).⁵ Because NASDAQ believed that a limit up/limit down mechanism, as proposed in the Plan, would be preferable to disparate individual market solutions to aberrant volatility, and because the Commission indicated that it may not find exchange-specific volatility moderators consistent with the Act, the Exchange determined to extend the pilot to January 31, 2011 yet hold implementation of the Volatility Guard pilot in abeyance.⁶ On January 27, 2012, NASDAQ filed an immediately effective filing to extend the operative period of the Volatility Guard pilot, while continuing to hold it in abeyance, so that it would expire the earlier of July 31, 2012 or the date on which, if approved, a limit up/limit down mechanism to address extraordinary market volatility, is approved.⁷

On May 31, 2012, the Commission approved the Plan on a pilot basis, with an implementation date of February 4, 2013.⁸ In approving the Plan, the Commission stated:

The Commission notes that some of the comments focused on the relation between the Plan, and other, exchange-specific volatility mechanisms, including the NYSE Liquidity Replenishment Points, and the Nasdaq Volatility Guard. While a stated purpose of the Plan is to replace the current single-stock circuit breaker, the Commission is also aware of the potential for unnecessary complexity that could result if the Plan were adopted, and exchange-specific volatility mechanisms were retained. To this end, *the Commission expects that, upon implementation of the Plan, such exchange-specific volatility mechanisms would be discontinued by the respective exchanges.* In that regard, the Commission notes that one such mechanism, the Nasdaq Volatility Guard, is currently set to expire on the earlier

⁵ Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

⁶ Securities Exchange Act Release No. 65176 (August 19, 2011), 76 FR 53518 (August 26, 2011) (SR–NASDAQ–2011–117).

⁷ Securities Exchange Act Release No. 66275 (January 30, 2012), 77 FR 5606 (February 3, 2012) (SR–NASDAQ–2012–019).

⁸ Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

of July 31, 2012, or the date on which the Plan is approved by the Commission.⁹

In light of the Commission’s multiple statements concerning its expectation that exchanged-based volatility moderators, such as the Volatility Guard and the NYSE Liquidity Replenishment Point process, would be discontinued by their respective exchanges, NASDAQ is hereby proposing to eliminate the Volatility Guard rule text from its rulebook.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general and with Sections 6(b)(5) of the Act,¹¹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

NASDAQ believes that the proposed rule change meets these requirements in that it promotes the adoption of the Plan’s uniform, cross-market limit up/limit down process to address aberrant volatility by eliminating an exchange-specific process that may add complexity and be potentially confusing to market participants. In this regard, NASDAQ notes that Volatility Guard, like other market-specific volatility mechanisms such as the NYSE Liquidity Replenishment Point program, may not be consistent with the Act upon implementation of the limit up/limit down mechanism to address extraordinary market volatility.

B. Self-Regulatory Organization’s Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

⁹ *Id.* at 33510, n. 182 (*emphasis added*).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹² and subparagraph (f)(6) of Rule 19b–4 thereunder.¹³

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. NASDAQ has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

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 No. SR–NASDAQ–2012–094 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 No. SR–NASDAQ–2012–094. 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

¹² 15 U.S.C. 78s(b)(3)(a)(ii).

¹³ 17 CFR 240.19b–4(f)(6).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NASDAQ-2012-094 and should be submitted on or before September 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012-20594 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67677; File No. SR-EDGA-2012-28]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend EDGA Rules To Add the Route Peg Order

August 16, 2012.

On June 26, 2012, EDGA Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 11.5 to provide an additional order type, the Route Peg Order. In addition, the Exchange proposed to amend Exchange Rule 11.8 to describe the priority of the Route Peg Order relative to other orders on the EDGA Book. The proposed rule change was published for comment in the

Federal Register on July 5, 2012.³ The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is August 19, 2012. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider issues concerning the proposed rule change, which would offer a new order type, the Route Peg Order, on the Exchange.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates October 3, 2012 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-EDGA-2012-28).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012-20593 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67676; File No. SR-EDGX-2012-25]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend EDGX Rules To Add the Route Peg Order

August 16, 2012.

On June 26, 2012, EDGX Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 11.5 to provide an additional order type, the Route Peg Order. In addition, the Exchange proposed to amend Exchange Rule 11.8 to describe the priority of the Route Peg Order relative to other orders on the EDGX Book. The proposed rule change was published for comment in the **Federal Register** on July 5, 2012.³ The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is August 19, 2012. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider issues concerning the proposed rule change, which would offer a new order type, the Route Peg Order, on the Exchange.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates October 3, 2012 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-EDGX-2012-25).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012-20592 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67290 (June 28, 2012), 77 FR 39768.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67291 (June 28, 2012), 77 FR 39785.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67675; File No. SR-C2-2012-027]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Making Technical, Non-Substantive Clarifications to its Fees Schedule

August 16, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 3, 2012, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "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 make technical, non-substantive clarifications to its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.c2exchange.com/Legal/>), at the Exchange's Office of the Secretary, and at the Commission'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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make clarifying, non-substantive changes to its Fees Schedule in order to make it easier to comprehend for market participants. First, the Exchange proposes to begin referring to "straight, one-sided orders" as "simple orders". Investors generally refer to orders as either "simple" or "complex" and the terminology "straight, one-sided orders" is not as commonly-known. Since simple orders are straight, one-sided orders, the Exchange proposes to call "straight, one-sided orders" "simple orders" in order to make the Fees Schedule easier for investors to understand. The Exchange further proposes to clarify that such orders are not complex orders (to which a separate set of fees apply) by referring to simple orders as "simple, non-complex" orders.³

Second, the Fees Schedule currently applies sets of fees for simple and complex transactions (with the exception of SPXPM) to "multiply-listed, equity and ETF options classes." While this is true, since SPXPM (as a singly-listed index options class) is neither a multiply-listed, equity or ETF options class, it reads slightly confusingly because there is no mention of index options classes. As such, the Exchange proposes to replace the term "multiply-listed, equity and ETF options classes" with "multiply-listed index, equity and ETF options classes" to clarify that the sets of fees apply to all index, equity and ETF options classes that are multiply-listed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to

³ The Commission notes that, in this proposed rule change, C2 failed to update similar references to "straight one-sided orders" in Section 1.B. of its Fees Schedule. C2 has submitted a separate proposed rule change to update these references. See SR-C2-2012-028.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed clarifying changes to the Fees Schedule serve to eliminate potential confusion, thereby perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)⁶ of the Act and paragraph (f) of Rule 19b-4⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-C2-2012-027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 C.F.R. 240.19b-4(f).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Securities and Exchange Commission,
100 F Street NE., Washington, DC
20549-1090.

All submissions should refer to File Number SR-C2-2012-027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2012-027 and should be submitted by September 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012-20591 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67666; File No. SR-NYSE-2012-18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Amending the New York Stock Exchange Price List To Provide for Additional Co-location Services and Establish Related Fees

August 15, 2012.

I. Introduction

On June 13, 2012, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the NYSE Price List to provide for additional co-location services and establish related fees. The proposed rule change was published for comment in the **Federal Register** on July 2, 2012.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange provides co-location services to Users from a data center in Mahwah, New Jersey.⁴ The Exchange's co-location services allow Users to rent space in the data center so that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution system.⁵ The Exchange proposes to make multiple changes to provide for additional co-location services and establish related fees.

Cabinet Cross Connects

Currently the Exchange allows Users with more than one cabinet within the data center to purchase one or more fiber cross connects between its cabinets. The Exchange proposes that

each User be permitted to purchase cross connects between its own cabinets, as is currently permitted, as well as between its cabinet(s) and the cabinets of separate Users within the data center.⁶ A cross connect between Users could be requested in order to receive technical support, order routing and/or market data delivery services from another User. In addition, the Exchange proposes to bundle cross connects such that a single sheath can hold either one cross connect or several cross connects in multiples of six (*e.g.*, six, twelve, eighteen or twenty-four cross connects). The Exchange proposes to charge a \$500 initial fee for either single or bundled cross connects and a monthly charge contingent upon the number of cross connects established.⁷

10 Gb LCN Connections

Users are currently able to purchase access to the Exchange's Liquidity Center Network ("LCN"), a local area network available in the data center, in either one or ten gigabit ("Gb") capacities, for which Users incur an initial and monthly fee per connection. The Exchange proposes that a User that purchases five 10 Gb LCN connections would only be charged the initial fee for a sixth 10 Gb LCN connection and would not be charged the monthly fee that would otherwise be applicable.

LCN CSP Connections

A User may act as a content service provider (a "CSP User") and deliver services to another User in the data center (a "Subscribing User"), such as order routing or market data delivery services. The services can be provided either via direct cross connect between the CSP User and Subscribing Users; or in addition, CSP Users can send data to, and communicate with, all their properly authorized Subscribing Users at once, via a dedicated LCN Connection (an "LCN CSP" connection). The Exchange proposes an initial connection fee for CSP Users establishing a LCN CSP connection as well as a monthly charge depending on whether the connection is a 1 or 10 Gb circuit. The Subscribing User receives the services via its standard LCN connection and is charged an initial and monthly fee that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67262 (June 26, 2012), 77 FR 39292 ("Notice").

⁴ See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56).

⁵ For purposes of its co-location services, the term "User" currently includes (i) member organizations, as that term is defined in NYSE Rule 2(b), (ii) Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B), and (iii) non-member organization broker-dealers and vendors that request to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 65973 (December 15, 2011), 76 FR 79232 (December 21, 2011) (SR-NYSE-2011-53).

⁶ The Exchange notes that only the User requesting the cross connect would be charged the related initial and monthly fees; the counterparty User would simply be required to give permission for the cross connection.

⁷ The Exchange proposes to charge \$500 monthly to furnish and install one cross connect between cabinets. For a bundle of six cross connects, the monthly charge would be \$1,500; 12 cross connects would be \$2,500 per month; 18 cross connects would be \$3,200 per month; and 24 cross connects would be \$3,900 per month.

⁸ 17 CFR 200.30-3(a)(12).

reflects the benefit of receiving services in this manner.⁸

Cages

A User may purchase a cage to house its cabinets within the data center. The Exchange charges fees for cages based on the size of the cage, which corresponds to the number of cabinets housed therein. The Exchange is proposing the following fees for cages:

- For 1–14 cabinets, a \$5,000 initial charge plus \$2,700 monthly charge;
- For 15–28 cabinets, a \$10,000 initial charge plus \$4,100 month charge; and
- For 29 cabinets or more, a \$15,000 initial charge plus \$5,500 monthly charge.

Change Fee

A User may arrange for the Exchange to reconfigure, modify, or otherwise change a co-location service that the Exchange has already established for the User. The Exchange proposes to charge a User a fee of \$950 per order if the User requests a change to one or more existing co-location services.⁹

Expedite Fee

A User may request that the Exchange expedite the completion of co-location services purchased or ordered by the User. The Exchange proposes to charge Users \$4,000 for expedited completion of co-location services.

Power Not Utilized Cabinet

A User may obtain unused cabinet space that the User intends to employ in the future in proximity to the User's existing cabinet space. The Exchange proposes to charge a fee for this cabinet space, in which the power is not utilized, of \$360 per month.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section

6(b)(4) of the Act,¹¹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In offering co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment costs, and costs related to personnel required for installation and ongoing support. The Exchange has represented that the fees charged are designed to defray expenses incurred or resources expended by the Exchange.¹³

For example, the Exchange proposes to charge the same \$500 connection fee for installing either a single cross connect or a bundled cross connect because the cost to the Exchange is generally equivalent. With regard to the cages offered by the Exchange, the initial and monthly cost increases in correlation to the size of the cage and how many cabinets it needs to contain because its size represents the opportunity cost of not using that space to sell additional cabinets, or for other Exchange purposes. In a similar vein, the expedite fee proposed corresponds to the additional Exchange resources needed to expedite customer requests, including the potential need for overtime compensation for data center staff. Respecting LCN CSP connections, the Exchange charges the same initial fee as for a standard LCN connection since the connection is physically the same, but the monthly fee is lower because LCN CSP connections are functionally limited in comparison to the standard LCN connection.¹⁴ Additionally, the Exchange represents that there is no differentiation among Users regarding the fees charged for a particular product, service or piece of equipment. In light of the Exchange's representations, the Commission

believes that the co-location fees proposed are consistent with Section 6(b)(4) and 6(b)(5) of the Exchange Act.

The Exchange is offering additional co-location services as a convenience to Users. For instance, the cross connects and LCN CSP connections provide Users within the data center with another alternative to transmit data or provide services, such as order routing or market data delivery services. The cages offered to Users can help prevent the discovery of the hardware employed by Users for co-location. As noted by the Exchange, these additional co-location services are available to all Users on an equal basis. The Commission believes that these additional services are also consistent with Section 6(b)(5) of the Exchange Act, as they are designed to remove impediments to and perfect the mechanism of a free and open market and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSE-2012-18) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-20569 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67667; File No. SR-NYSEArca-2012-63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Provide for Additional Co-location Services and Establish Related Fees

August 15, 2012.

I. Introduction

On June 13, 2012, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the NYSE Arca Options Fee Schedule to provide for

⁸ For a CSP User, a 1Gb Circuit for a LCN CSP connection has a \$6,000 connection charge plus a \$500 monthly fee. A 10Gb Circuit for a LCN CSP connection has a \$10,000 initial connection charge plus a \$5,000 monthly fee. A CSP Subscriber has an initial charge of \$950 plus a \$300 monthly fee per LCN CSP.

⁹ If a User orders two or more services at one time, the User would be charged a one-time Change Fee of \$950, which would cover the multiple services.

¹⁰ 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).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

¹³ See Notice *supra* note 3.

¹⁴ A LCN CSP connection may only be used for providing services to Subscribing Users and may not be used for other purposes, such as accessing the Exchange.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

additional co-location services and establish related fees. The proposed rule change was published for comment in the **Federal Register** on July 2, 2012.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange provides co-location services to Users from a data center in Mahwah, New Jersey.⁴ The Exchange's co-location services allow Users to rent space in the data center so that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution system.⁵ The Exchange proposes to make multiple changes to provide for additional co-location services and establish related fees.

Cabinet Cross Connects

Currently the Exchange allows Users with more than one cabinet within the data center to purchase one or more fiber cross connects between its cabinets. The Exchange proposes that each User be permitted to purchase cross connects between its own cabinets, as is currently permitted, as well as between its cabinet(s) and the cabinets of separate Users within the data center.⁶ A cross connect between Users could be requested in order to receive technical support, order routing and/or market data delivery services from another User. In addition, the Exchange proposes to bundle cross connects such that a single sheath can hold either one cross connect or several cross connects in multiples of six (*e.g.*, six, twelve, eighteen or twenty-four cross connects). The Exchange proposes to charge a \$500 initial fee for either single or bundled cross connects and a monthly charge contingent upon the number of cross connects established.⁷

³ See Securities Exchange Act Release No. 67264 (June 26, 2012), 77 FR 39296 ("Notice").

⁴ See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56).

⁵ For purposes of its co-location services, the term "User" currently includes (i) member organizations, as that term is defined in NYSE Rule 2(b), (ii) Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B), and (iii) non-member organization broker-dealers and vendors that request to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 65970 (December 15, 2011), 76 FR 79242 (December 21, 2011) (SR-NYSEArca-2011-74).

⁶ The Exchange notes that only the User requesting the cross connect would be charged the related initial and monthly fees; the counterparty User would simply be required to give permission for the cross connection.

⁷ The Exchange proposes to charge \$500 monthly to furnish and install one cross connect between cabinets. For a bundle of six cross connects, the

10 Gb LCN Connections

Users are currently able to purchase access to the Exchange's Liquidity Center Network ("LCN"), a local area network available in the data center, in either one or ten gigabit ("Gb") capacities, for which Users incur an initial and monthly fee per connection. The Exchange proposes that a User that purchases five 10 Gb LCN connections would only be charged the initial fee for a sixth 10 Gb LCN connection and would not be charged the monthly fee that would otherwise be applicable.

LCN CSP Connections

A User may act as a content service provider (a "CSP User") and deliver services to another User in the data center (a "Subscribing User"), such as order routing or market data delivery services. The services can be provided either via direct cross connect between the CSP User and Subscribing Users; or in addition, CSP Users can send data to, and communicate with, all their properly authorized Subscribing Users at once, via a dedicated LCN Connection (an "LCN CSP" connection). The Exchange proposes an initial connection fee for CSP Users establishing a LCN CSP connection as well as a monthly charge depending on whether the connection is a 1 or 10 Gb circuit. The Subscribing User receives the services via its standard LCN connection and is charged an initial and monthly fee that reflects the benefit of receiving services in this manner.⁸

Cages

A User may purchase a cage to house its cabinets within the data center. The Exchange charges fees for cages based on the size of the cage, which corresponds to the number of cabinets housed therein. The Exchange is proposing the following fees for cages:

- For 1–14 cabinets, a \$5,000 initial charge plus \$2,700 monthly charge;
- For 15–28 cabinets, a \$10,000 initial charge plus \$4,100 month charge; and
- For 29 cabinets or more, a \$15,000 initial charge plus \$5,500 monthly charge.

Change Fee

A User may arrange for the Exchange to reconfigure, modify, or otherwise

monthly charge would be \$1,500; 12 cross connects would be \$2,500 per month; 18 cross connects would be \$3,200 per month; and 24 cross connects would be \$3,900 per month.

⁸ For a CSP User, a 1Gb Circuit for a LCN CSP connection has a \$6,000 connection charge plus a \$500 monthly fee. A 10Gb Circuit for a LCN CSP connection has a \$10,000 initial connection charge plus a \$5,000 monthly fee. A CSP Subscriber has an initial charge of \$950 plus a \$300 monthly fee per LCN CSP.

change a co-location service that the Exchange has already established for the User. The Exchange proposes to charge a User a fee of \$950 per order if the User requests a change to one or more existing co-location services.⁹

Expedite Fee

A User may request that the Exchange expedite the completion of co-location services purchased or ordered by the User. The Exchange proposes to charge Users \$4,000 for expedited completion of co-location services.

Power Not Utilized Cabinet

A User may obtain unused cabinet space that the User intends to employ in the future in proximity to the User's existing cabinet space. The Exchange proposes to charge a fee for this cabinet space, in which the power is not utilized, of \$360 per month.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In offering co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment costs, and costs related to personnel required for installation and ongoing support. The Exchange has represented that the fees

⁹ If a User orders two or more services at one time, the User would be charged a one-time Change Fee of \$950, which would cover the multiple services.

¹⁰ 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).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

charged are designed to defray expenses incurred or resources expended by the Exchange.¹³ For example, the Exchange proposes to charge the same \$500 connection fee for installing either a single cross connect or a bundled cross connect because the cost to the Exchange is generally equivalent. With regard to the cages offered by the Exchange, the initial and monthly cost increases in correlation to the size of the cage and how many cabinets it needs to contain because its size represents the opportunity cost of not using that space to sell additional cabinets, or for other Exchange purposes. In a similar vein, the expedite fee proposed corresponds to the additional Exchange resources needed to expedite customer requests, including the potential need for overtime compensation for data center staff. Respecting LCN CSP connections, the Exchange charges the same initial fee as for a standard LCN connection since the connection is physically the same, but the monthly fee is lower because LCN CSP connections are functionally limited in comparison to the standard LCN connection.¹⁴ Additionally, the Exchange represents that there is no differentiation among Users regarding the fees charged for a particular product, service or piece of equipment. In light of the Exchange's representations, the Commission believes that the co-location fees proposed are consistent with Section 6(b)(4) and 6(b)(5) of the Exchange Act.

The Exchange is offering additional co-location services as a convenience to Users. For instance, the cross connects and LCN CSP connections provide Users within the data center with another alternative to transmit data or provide services, such as order routing or market data delivery services. The cages offered to Users can help prevent the discovery of the hardware employed by Users for co-location. As noted by the Exchange, these additional co-location services are available to all Users on an equal basis. The Commission believes that these additional services are also consistent with Section 6(b)(5) of the Exchange Act, as they are designed to remove impediments to and perfect the mechanism of a free and open market and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

¹³ See Notice *supra* note 3.

¹⁴ A LCN CSP connection may only be used for providing services to Subscribing Users and may not be used for other purposes, such as accessing the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSEArca-2012-63) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-20570 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67668; File No. SR-CBOE-2012-078]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

August 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 3, 2012, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment 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 the Fees Schedule of its CBOE Stock Exchange ("CBSX"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission'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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX recently moved its trading systems over to the Equinix NY4 facility ("NY4"). In addition to 1 Gigabit Ethernet network access, NY4 has capacity to accommodate 10 Gigabit Ethernet network access. The Exchange made such a connection available to CBSX market participants, and wants to encourage market participants to connect to CBSX via a 10 Gigabit Network Access Port in order to receive higher-speed executions (which is important in today's marketplace). Due to the newness of this NY4 system to CBSX, the Exchange wishes to ensure that market participants feel comfortable connecting to CBSX via the 10 Gigabit Network Access Ports and assuage any kind of concerns CBSX market participants may have regarding any kind of possible disruption in access to CBSX via the 10 Gigabit Network Access Ports. Therefore, CBSX now proposes to add a sentence to its Fees Schedule stating that participants requesting a 10 Gigabit Network Access Port to access CBSX are eligible to receive (upon request) one redundant 10 Gigabit Network Access Port at no extra charge.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.³ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁴ which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Providing CBSX market participants who access the CBSX System via a 10 Gigabit Network Access Port on NY4 the opportunity to request a redundant 10

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4).

Gigabit Network Access Port to act as a backup is reasonable because such market participants will receive a backup redundant 10 Gigabit Network Access Port free of charge.

Providing CBSX market participants who access the CBSX System via a 10 Gigabit Network Access Port on NY4 the opportunity to request a redundant 10 Gigabit Network Access Port to act as a backup while not providing the same opportunity to CBSX market participants who access the CBSX System via a 1 Gigabit Network Access Port is equitable and not unfairly discriminatory because providing such opportunity would cause an increase in the price of accessing the CBSX System via a 1 Gigabit Network Access Port. Moreover, as faster access continues to grow in importance to trading and CBSX continues to develop technologies that provide faster access to CBSX, CBSX wants to encourage the election to connect to CBSX via a higher-speed Network Access Port in order to provide better trading opportunities on CBSX. Further, while a 10 Gigabit Network Access Port connection is more costly than a 1 Gigabit Network Access Port connection, considering the fact that a 10 Gigabit Network Access Port provides a connection that is ten times faster than a 1 Gigabit Network Access Port, a 10 Gigabit Network Access Port actually provides a less expensive connection on a per-Gigabit basis.⁵ Finally, any CBSX market participant may elect to connect to CBSX via a 10 Gigabit Network Access Port (and therefore be eligible to request a redundant 10 Gigabit Network Access Port).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)⁶ of the Act and paragraph (f)

of Rule 19b-4⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2012-078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2012-078. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2012-078 and should be submitted on or before September 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-20571 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67669; File No. SR-NYSEArca-2012-62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Provide for Additional Co-location Services and Establish Related Fees

August 15, 2012.

I. Introduction

On June 13, 2012, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to provide for additional co-location services and establish related fees. The proposed rule change was published for comment in the **Federal Register** on July 2, 2012.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange provides co-location services to Users from a data center in Mahwah, New Jersey.⁴ The Exchange's co-location services allow Users to rent space in the data center so that they may locate their electronic servers in close physical proximity to the Exchange's

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67263 (June 26, 2012), 77 FR 39305 ("Notice").

⁴ See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56).

⁵ See CBSX Fees Schedule, Section 8.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f).

trading and execution system.⁵ The Exchange proposes to make multiple changes to provide for additional co-location services and establish related fees.

Cabinet Cross Connects

Currently the Exchange allows Users with more than one cabinet within the data center to purchase one or more fiber cross connects between its cabinets. The Exchange proposes that each User be permitted to purchase cross connects between its own cabinets, as is currently permitted, as well as between its cabinet(s) and the cabinets of separate Users within the data center.⁶ A cross connect between Users could be requested in order to receive technical support, order routing and/or market data delivery services from another User. In addition, the Exchange proposes to bundle cross connects such that a single sheath can hold either one cross connect or several cross connects in multiples of six (*e.g.*, six, twelve, eighteen or twenty-four cross connects). The Exchange proposes to charge a \$500 initial fee for either single or bundled cross connects and a monthly charge contingent upon the number of cross connects established.⁷

10 Gb LCN Connections

Users are currently able to purchase access to the Exchange's Liquidity Center Network ("LCN"), a local area network available in the data center, in either one or ten gigabit ("Gb") capacities, for which Users incur an initial and monthly fee per connection. The Exchange proposes that a User that purchases five 10 Gb LCN connections would only be charged the initial fee for a sixth 10 Gb LCN connection and would not be charged the monthly fee that would otherwise be applicable.

⁵ For purposes of its co-location services, the term "User" currently includes (i) member organizations, as that term is defined in NYSE Rule 2(b), (ii) Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B), and (iii) non-member organization broker-dealers and vendors that request to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 65970 (December 15, 2011), 76 FR 79242 (December 21, 2011) (SR-NYSEArca-2011-74).

⁶ The Exchange notes that only the User requesting the cross connect would be charged the related initial and monthly fees; the counterparty User would simply be required to give permission for the cross connection.

⁷ The Exchange proposes to charge \$500 monthly to furnish and install one cross connect between cabinets. For a bundle of six cross connects, the monthly charge would be \$1,500; 12 cross connects would be \$2,500 per month; 18 cross connects would be \$3,200 per month; and 24 cross connects would be \$3,900 per month.

LCN CSP Connections

A User may act as a content service provider (a "CSP User") and deliver services to another User in the data center (a "Subscribing User"), such as order routing or market data delivery services. The services can be provided either via direct cross connect between the CSP User and Subscribing Users; or in addition, CSP Users can send data to, and communicate with, all their properly authorized Subscribing Users at once, via a dedicated LCN Connection (an "LCN CSP" connection). The Exchange proposes an initial connection fee for CSP Users establishing a LCN CSP connection as well as a monthly charge depending on whether the connection is a 1 or 10 Gb circuit. The Subscribing User receives the services via its standard LCN connection and is charged an initial and monthly fee that reflects the benefit of receiving services in this manner.⁸

Cages

A User may purchase a cage to house its cabinets within the data center. The Exchange charges fees for cages based on the size of the cage, which corresponds to the number of cabinets housed therein. The Exchange is proposing the following fees for cages:

- For 1–14 cabinets, a \$5,000 initial charge plus \$2,700 monthly charge;
- For 15–28 cabinets, a \$10,000 initial charge plus \$4,100 month charge; and
- For 29 cabinets or more, a \$15,000 initial charge plus \$5,500 monthly charge.

Change Fee

A User may arrange for the Exchange to reconfigure, modify, or otherwise change a co-location service that the Exchange has already established for the User. The Exchange proposes to charge a User a fee of \$950 per order if the User requests a change to one or more existing co-location services.⁹

Expedite Fee

A User may request that the Exchange expedite the completion of co-location services purchased or ordered by the User. The Exchange proposes to charge Users \$4,000 for expedited completion of co-location services.

⁸ For a CSP User, a 1Gb Circuit for a LCN CSP connection has a \$6,000 connection charge plus a \$500 monthly fee. A 10Gb Circuit for a LCN CSP connection has a \$10,000 initial connection charge plus a \$5,000 monthly fee. A CSP Subscriber has an initial charge of \$950 plus a \$300 monthly fee per LCN CSP.

⁹ If a User orders two or more services at one time, the User would be charged a one-time Change Fee of \$950, which would cover the multiple services.

Power Not Utilized Cabinet

A User may obtain unused cabinet space that the User intends to employ in the future in proximity to the User's existing cabinet space. The Exchange proposes to charge a fee for this cabinet space, in which the power is not utilized, of \$360 per month.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In offering co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment costs, and costs related to personnel required for installation and ongoing support. The Exchange has represented that the fees charged are designed to defray expenses incurred or resources expended by the Exchange.¹³ For example, the Exchange proposes to charge the same \$500 connection fee for installing either a single cross connect or a bundled cross connect because the cost to the Exchange is generally equivalent. With regard to the cages offered by the Exchange, the initial and monthly cost increases in correlation to the size of the cage and how many cabinets it needs to contain because its size represents the opportunity cost of not using that space to sell additional cabinets, or for other Exchange purposes. In a similar vein,

¹⁰ 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).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

¹³ See Notice *supra* note 3.

the expedite fee proposed corresponds to the additional Exchange resources needed to expedite customer requests, including the potential need for overtime compensation for data center staff. Respecting LCN CSP connections, the Exchange charges the same initial fee as for a standard LCN connection since the connection is physically the same, but the monthly fee is lower because LCN CSP connections are functionally limited in comparison to the standard LCN connection.¹⁴ Additionally, the Exchange represents that there is no differentiation among Users regarding the fees charged for a particular product, service or piece of equipment. In light of the Exchange's representations, the Commission believes that the co-location fees proposed are consistent with Section 6(b)(4) and 6(b)(5) of the Exchange Act.

The Exchange is offering additional co-location services as a convenience to Users. For instance, the cross connects and LCN CSP connections provide Users within the data center with another alternative to transmit data or provide services, such as order routing or market data delivery services. The cages offered to Users can help prevent the discovery of the hardware employed by Users for co-location. As noted by the Exchange, these additional co-location services are available to all Users on an equal basis. The Commission believes that these additional services are also consistent with Section 6(b)(5) of the Exchange Act, as they are designed to remove impediments to and perfect the mechanism of a free and open market and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSEArca-2012-62) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012-20572 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

¹⁴ A LCN CSP connection may only be used for providing services to Subscribing Users and may not be used for other purposes, such as accessing the Exchange.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67670; File No. SR-CBOE-2012-076]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Automatic Order Handling Process

August 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 2, 2012, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding its automatic order handling process. The text of the proposed rule change is available on the Exchange's Web site at <http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>, 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 its rules regarding its automatic order handling process. The proposed rule change adds subparagraph (vi) to Rule 6.13(b) to codify how the CBOE Hybrid System³ handles market orders to sell in option series for which the national best bid in the series is zero ("no-bid series").⁴ If the CBOE Hybrid System receives during the trading day or has resting in the electronic book after the opening of trading a market order to sell in a no-bid series, it handles the order as follows:

- If the Exchange best offer in that series is less than or equal to \$0.30, then the CBOE Hybrid System will consider, for the remainder of the trading day, the market order as a limit order to sell with a limit price equal to the minimum trading increment applicable to the series and enter the order into the electronic book behind limit orders to sell at the minimum increment that are already resting in the book.

- If the Exchange best offer in that series is greater than \$0.30, then the CBOE Hybrid System will route the market order to sell to PAR or, at the order entry firm's discretion, to the order entry firm's booth. If the market order is not eligible to route to PAR, then it will be cancelled.

The Exchange's Rules are currently silent on how the CBOE Hybrid System handles market orders to sell in no-bid series. The Exchange believes that proposed Rule 6.13(b)(vi) will clarify for investors how the CBOE Hybrid System handles these orders.⁵ The Exchange

³ The CBOE Hybrid System is a trading platform that allows automatic executions to occur electronically and open outcry trades to occur on the floor of the Exchange. To operate in this "hybrid" environment, the Exchange has a dynamic order handling system that has the capability to route orders to the trade engine for automatic execution and book entry, to Trading Permit Holder and PAR Official workstations located in the trading crowds for manual handling, and/or to other order management terminals generally located in booths on the trading floor for manual handling. Where an order is routed for processing by the Exchange order handling system depends on various parameters configured by the Exchange and the order entry firm itself.

⁴ The Exchange notes that, for singly listed series, the national best bid is equivalent to the Exchange's best bid and the national best offer is equivalent to the Exchange's best offer.

⁵ The Exchange notes for informational purposes that other options exchanges have rules that address how their systems handle market orders to sell no-bid series. See, e.g., NASDAQ OMX PHLX ("Phlx") Rule 1080(i) (which provides that the Phlx system will convert market orders to sell a no-bid series to limit orders to sell with a limit price of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

believes that the automatic handling of market orders to sell in no-bid series if the Exchange best offer is less than or equal to \$0.30 reduces the manual handling of orders and facilitates the CBOE Hybrid System's automatic handling process. Additionally, the \$0.30 threshold serves as a protection feature for investors in certain situations, such as when a series is no-bid because the last bid traded just prior to the entry of the market order to sell. The purpose of this threshold is to limit the automatic handling of market orders to sell in no-bid series to only those for true zero-bid options, as options in no-bid series with an offer of more than \$0.30 are likely not worthless.

For example, if the CBOE Hybrid System receives a market order to sell in a no-bid series with a minimum increment of \$0.01 and the Exchange best offer is \$0.20, the CBOE Hybrid System will consider, for the remainder of the trading day, the order as a limit order with a price of \$0.01 and submit it to the electronic book behind other limit orders to sell at the minimum increment that are already resting in the book. At that point, even if the series is no-bid because, for example, the last bid just traded and the limit order trades at \$0.01, the next bid entered after the trade would not be higher than \$0.20.⁶

However, if the CBOE Hybrid System receives a market order to sell in a no-bid series with a minimum increment of \$0.01 and the Exchange best offer is \$1.20 (because, for example, the last bid of \$1.00 just traded), the CBOE Hybrid System will instead route the order to PAR (or, at the order entry firm's discretion, to the order entry firm's booth). Manual handling of the order provides the entering firm with a potential opportunity to trade at a better price, since the next bid entered in that series is likely to be much higher than \$0.01.⁷ It would be unfair to the

minimum trading increment applicable to that series that are received when Phlx's disseminated quotation in the series has a bid/ask differential less than or equal to \$0.25, and will place the limit orders on the book).

⁶ If the order does not execute during the trading day as a limit order and remains outstanding after the close of trading (i.e., a good-til-cancelled order), the CBOE Hybrid System at that time will no longer consider the order as a limit order and will again handle the order as a market order to sell after the close of trading. The market order will stay on the electronic book until the opening of the next trading day (or until cancelled), at which point it may execute during the open or, if it remains unexecuted after the opening of trading, it will either execute with the best bid at the time or, if the series is still no-bid, again be handled pursuant to proposed Rule 6.13(b)(vi).

⁷ Routing the market order to PAR or the order entry firm's booth provides for an alternative means through which the order may be executed before it is simply cancelled.

entering firm to let its market order trade as a limit order for \$0.01 because, for example, the firm submitted the order during the brief time when there were no disseminated bids in a series trading significantly higher than the minimum increment. Once entered into PAR, the appropriate PAR Official⁸ will review the terms of the order and handle the order as set forth in Rule 7.12 (for example, the PAR Official may bring the order to the trading crowd or enter the order into the electronic book). PAR Officials must use due diligence to execute orders that they receive at their PAR workstations at the best prices available to them under the Exchange Rules.⁹

The \$0.30 threshold has been in place for a number of years, and the Exchange believes the threshold is reasonable. The Exchange notes that this threshold is less than the acceptable price range ("APR") in the price check parameter provision in Rule 6.13(b)(v). Pursuant to that provision, the CBOE Hybrid System will not automatically execute a marketable order if the width between the national best bid and national best offer is not within the APR, which for an option contract with a bid of less than \$2 may not be less than \$0.375.¹⁰ Instead, the CBOE Hybrid System will route the order to PAR or the order entry firm's booth, or if the order is not eligible to route to PAR, it will be cancelled. Notwithstanding this provision, proposed Rule 6.13(b)(vi) allows for the potential execution of market orders to sell in no-bid series with offers less than [sic]¹¹ \$0.30 as

⁸ A "PAR Official" is an Exchange employee or independent contractor whom the Exchange may designate as being responsible for (a) operating the PAR workstation in a DPM trading crowd with respect to the classes of options assigned to him/her; (b) when applicable, maintaining the book with respect to the classes of options assigned to him/her; and (c) effecting proper executions of orders placed with him/her. The PAR Official may not be affiliated with any Trading Permit Holder that is approved to act as a Market-Maker. See Rule 7.12(a).

⁹ Rule 7.12(b)(ii).

¹⁰ Rule 6.13(b)(v) also provides that the CBOE Hybrid System will not automatically execute eligible orders that are marketable if the execution would follow an initial partial execution on the Exchange and would be at a subsequent price that is not within an acceptable tick distance from the initial execution. The APR for purposes of Rule 6.13(b)(v) is determined by the Exchange on a class-by-class basis and may not be less than \$0.375 between the bid and offer for each option contract for which the bid is less than \$2, \$0.60 where the bid is at least \$2 but does not exceed \$5, \$0.75 where the bid is more than \$5 but does not exceed \$10, \$1.20 where the bid is more than \$10 but does not exceed \$20, and \$1.50 where the bid is more than \$20. An "acceptable tick distance" [sic] less than two minimum increments.

¹¹ The Commission notes that CBOE's proposed rule text actually specifies that the Exchange would convert market orders in no-bid series to limit

limit orders at the price of a minimum increment. If the threshold in proposed Rule 6.13(b)(vi) were higher, the risk of having a market order trade at a minimum increment in a series that is not truly no-bid would increase. This risk of execution is not present in the price check parameter provision in Rule 6.13(b)(v), and therefore the Exchange believes a wider APR is appropriate for that provision.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change protects investors and the public interest by providing investors with more clarity regarding the CBOE Hybrid System's automatic order handling process—specifically how it processes market orders to sell in no-bid series. The Exchange believes that the automated handling of market orders to sell in no-bid series if the Exchange best offer is \$0.30 or less assists with the maintenance of fair and orderly markets and protects investors and the public interest because it provides for automated handling of these orders, ultimately resulting in more efficient executions of these orders. The Exchange believes that the \$0.30 threshold also protects investors and assists with the maintenance of fair and orderly markets by preventing executions of market orders to sell in no-bid series with higher offers at potentially extreme prices in series that are not truly no-bid. The Exchange believes this threshold appropriately reflects the interests of investors, as options in no-bid series with offers higher than \$0.30 are likely not worthless, and manual handling of these orders will lead to better executions for investors than would occur through automatic handling.

orders where the Exchange's best offer is less than or equal to \$.30 (emphasis added).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁶

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2012-076 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2012-076. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2012-076 and should be submitted on or before September 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-20573 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

¹⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67672; File No. SR-NYSEAmex-2012-29]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Commentary .07 to NYSE Amex Options Rule 904 To Eliminate Position Limits for Options on the SPDR® S&P 500® Exchange-Traded Fund

August 15, 2012.

I. Introduction

On May 2, 2012, NYSE Amex LLC ("NYSE Amex" or "Exchange")¹ filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposed rule change to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund ("SPY ETF") on a pilot basis.⁴ The proposed rule change was published for comment in the **Federal Register** on May 18, 2012.⁵ On June 27, 2012, the Commission extended to August 16, 2012 the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.⁶ The Commission received two comment letters on the proposal.⁷ On August 9, 2012, NYSE Amex filed Amendment No. 1 to the proposed rule change.⁸ The Commission is publishing

¹ NYSE Amex now is known as "NYSEMKT." The proposed rule change to which this order relates, however, was submitted before the name change was implemented.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ "SPDR®," "Standard & Poor's®," "S&P®," "S&P 500®," and "Standard & Poor's 500" are registered trademarks of Standard & Poor's Financial Services LLC. As described by the Exchange, the SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

⁵ See Securities Exchange Act Release No. 66984 (May 14, 2012), 77 FR 29721 (May 18, 2012) ("Notice").

⁶ See Securities Exchange Act Release No. 67278 (June 27, 2012), 77 FR 39547 (July 3, 2012).

⁷ See letters to Elizabeth M. Murphy, Secretary, Commission, from: John E. Andrie, Managing Member, Andrie Trading LLC, dated July 16, 2012 ("Andrie Letter"); and Jenny Klebes Golding, Senior Attorney, Legal Division, Chicago Board Options Exchange, Incorporated ("CBOE"), dated July 30, 2012 ("CBOE Letter").

⁸ In Amendment No. 1, the Exchange proposed to implement its proposal on a pilot basis and also explicitly stated that NYSE Amex Options Rule

this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Amended Proposal

Options on the SPY ETF (“SPY options”) are American-style, p.m.-settled options that physically settle into shares of the underlying SPY ETF.⁹ Currently, Commentary .07 to NYSE Amex Options Rule 904 imposes a position limit for SPY options of 900,000 contracts on the same side of the market. The Exchange believes that the current position limit could deter the optimal use of SPY options as a hedging tool.¹⁰ Further, it contends, the current position limit may inhibit the ability of certain large market participants, such as mutual funds and other institutional investors with substantial hedging needs, to utilize SPY options and gain meaningful exposure to the hedging function they provide.¹¹

Thus, the Exchange’s proposal, as amended, seeks to amend Commentary .07 to NYSE Amex Options Rule 904 to eliminate position limits for SPY options on a fourteen-month pilot basis set to end October 15, 2013. The Exchange states that it will perform an analysis of the initial pilot program after a twelve month period (the “Pilot Report”), which will be submitted to the Commission within thirty (30) days of the end of the Pilot Period. The Pilot Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY contract, particularly at expiration. The Pilot Report also will detail the size and different types of strategies employed with respect to positions established in SPY options; note whether any problems, in the underlying SPY ETF or otherwise, arose as a result of the no-limit approach; and include any other information that may be useful in evaluating the effectiveness of the pilot program. In preparing the Pilot Report, the Exchange will utilize various data elements such as volume and open interest. If the pilot is not extended or permanently approved by the end of the Pilot Period, the position limits for SPY options will revert to the limits in effect at the commencement of the pilot program.

906(b) applies to SPY options. These aspects of the proposal are described in more detail below.

⁹ See Notice, 77 FR at 29724.

¹⁰ *Id.* at 29721.

¹¹ *Id.* at 29722–23.

The Exchange believes that SPY options with no position limit will (1) offer investors another investment option through which they could obtain and hedge significant levels of exposure to the S&P 500 stocks, (2) be available to trade on the Exchange (and presumably all other U.S. options exchanges) electronically, and (3) provide investors with added flexibility through an additional product that, in the Exchange’s view, may be better tailored to meet their particular investment, hedging, and trading needs, because, among other things, they are p.m.-settled.¹²

The Exchange cites the current treatment of SPX index options¹³ and SPXPM index options,¹⁴ both of which, like SPY options, are based on the S&P 500, and neither of which is subject to position limits.¹⁵ The Exchange contends that, because SPX, SPXPM, and SPY options are ultimately derivative of the same benchmark—the S&P 500 Index—they should be treated equally from a position limit perspective.¹⁶ The Exchange also argues that the Delta-Based Equity Hedge Exemption for delta-neutral option

¹² *Id.* at 29722. In support of its proposal, the Exchange contends that the creation and redemption process for the SPY ETF allows large investors to transfer positions from a basket of stocks comprising the S&P 500 Index to an equivalent number of ETF shares (and the reverse) with relative ease, and argues that, because of this, there is no reason to disadvantage options overlying the one versus the other. *Id.*

¹³ SPX index options are a.m.-settled, cash-settled options on the S&P 500 Index, which list and trade exclusively on the CBOE.

¹⁴ SPXPM index options are p.m.-settled, cash-settled options on the S&P 500 Index, which list and trade on the C2 Options Exchange (“C2”). SPXPM, unlike SPX, is based on the closing value of the S&P 500 Index, and, in this respect, the Exchange states, it is very much like SPY options, which are also settled at the close, acknowledging that the SPXPM is settled into cash as opposed to shares of the underlying, like SPY options. See Notice, 77 FR at 29722.

¹⁵ *Id.* The Exchange notes that SPX index options are 10 times the size of SPY options, so that a position of only 90,000 SPX index options is the equivalent of a position of 900,000 SPY options. *Id.* The Exchange further notes that the reduced-value option on the S&P 500 Index (option symbol XSP) is the equivalent size of SPY options, and, similar to SPX index options, is not subject to position limits. *Id.*

¹⁶ *Id.* As a practical matter, the Exchange adds, investors utilize SPX, SPXPM, and SPY options and their respective underlying instruments and futures to gain exposure to the same benchmark index, the S&P 500. *Id.* The Exchange also states that, anecdotally, market participants perceive value in avoiding the regulatory risk of exceeding the position limit on SPY options by instead using SPX index options for their hedging needs. Although exemptions are available with respect to the position limits for SPY options, the Exchange believes that such exemptions and the regulatory burden attendant with them, in its view, may dissuade investors from using SPY options when they can instead use an SPX index option without the need for an exemption. *Id.* at 29723.

positions,¹⁷ which allows SPY option positions to be delta-hedged by SPX index option positions, reflects the economic equivalence of the two products.¹⁸

The Exchange argues that, if no position limits have been found to be warranted on both SPX and SPXPM index options, the same treatment should be extended to SPY options so that inconsistent position limits do not produce competitive advantages and disadvantages among contracts. The Exchange cites observations regarding competition among economically equivalent products, appearing in a 2005 paper by Hans R. Dutt and Lawrence E. Harris,¹⁹ in making this argument.

The Exchange cites the Commission as noting, in its approval of the elimination of position and exercise limits with respect to SPX index options, that the markets for the securities underlying the S&P 500 Index are deep and liquid, and maintaining that this reduces concerns regarding manipulation or disruption in the underlying markets.²⁰ The Exchange represents that this would similarly be the case if position limits were eliminated for SPY options.²¹ According to the Exchange, SPY options as well as the SPY ETF exhibit deep, liquid markets.²² In this regard, the Exchange states that SPY options are currently the most actively traded option class in terms of average daily volume (“ADV”),²³ with ADV of 5,789,511 for year 2011 and 4,525,709 for the period January 1, 2012 to April 19, 2012.²⁴ The Exchange also provides figures indicating that the SPY ETF ADV was 218,227,747 for year 2011 and 145,164,527 for the period January 1, 2012 to April 19, 2012.²⁵ The Exchange represents further that there is tremendous liquidity in the component securities upon which the S&P 500 is based, providing figures indicating that the component securities’ ADV was

¹⁷ See Commentary .10 to NYSE Amex Options Rule 904.

¹⁸ See Notice, 77 FR at 29722. In making this argument, the Exchange states that, given the fact that SPX index options are not subject to position limits, an Exchange member, member organization, or non-member affiliate could theoretically establish a position in SPY options far in excess of the current 900,000 contract limit, provided that the position is hedged with SPX index options.

¹⁹ See *The Journal of Futures Markets*, Vol. 25, no. 10, 945–965 (2005) (“Position Limits for Cash-Settled Derivative Contracts,” by Hans R. Dutt and Lawrence E. Harris) (“Dutt-Harris Paper”).

²⁰ See Notice, 77 FR at 29723.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 29721.

²⁴ *Id.* at 29723.

²⁵ *Id.*

3,289,595,675 for year 2011 and 2,851,457,600 for the period January 1, 2012 to April 19, 2012.²⁶

The Exchange also believes that the SPY ETF's market capitalization is at a level consistent with that which the Commission has previously determined to be sufficiently large, in tandem with the depth and liquidity of the markets for the SPY ETF, to reduce concerns regarding manipulation.²⁷ In this regard, the Exchange provides figures indicating that the average SPY ETF market capitalization was \$89,533,777,897 for year 2011 and \$99,752,986,022 for the period January 1, 2012 to April 19, 2012.²⁸

The Exchange further cites the Dutt-Harris Paper in addressing possible concerns that the elimination of the position limit on SPY options could raise the risk of market manipulation. The Exchange believes that the Dutt-Harris analysis, which focuses on concerns relating to manipulation of cash-settled derivatives, suggests that whatever manipulation risk does exist in a cash-settled, broad-based product such as the SPXPM index option, the corresponding risk in a physically-settled, but equally broad-based product such as the SPY option, is likely to be equally low, if not lower.²⁹

In assessing the appropriateness of eliminating position limits for SPY options, the Exchange also notes its rules setting forth reporting requirements for large options positions and, among other things, the Exchange's ability to impose higher margin requirements upon accounts that it determines to be under-hedged.³⁰ The Exchange further states that the reporting, surveillance, and monitoring mechanisms that it currently has in place for certain other option products that trade on the Exchange without position limits are effective and could easily accommodate SPY options.

Finally, with respect to concerns that the elimination of position limits for

SPY options could result in, or increase, market-on-close volatility, the Exchange believes that the ability to hedge SPY options with shares of the SPY ETF reduces the likelihood of such volatility.³¹ In this regard, the Exchange argues that, because SPY options are physically-settled, they can be easily hedged via long or short positions in shares of the SPY ETF, which, as discussed at *supra* note 12 and accompanying text, the Exchange maintains can be easily created or redeemed as needed.³²

III. Comment Summary

The Commission received two comment letters on the proposal. One letter supported the proposed elimination of position limits on SPY options.³³ The commenter also expressed a belief that elimination of SPY option position limits would result in more trading business on regulated exchanges, as opposed to other venues, and would improve market transparency.³⁴ A second comment letter neither supported nor opposed the proposal, but suggested that a reporting requirement would be useful should position and exercise limits be eliminated for SPY options.³⁵

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,³⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market

and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

Position and exercise limits serve as a regulatory tool designed to address manipulative schemes and adverse market impact surrounding the use of options. Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise.³⁸ These position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit the options position.³⁹ In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market.⁴⁰ In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.⁴¹

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits for option products overlying certain ETFs where there is considerable liquidity in both the underlying cash markets and the options markets, and, in the case of certain broad-based index options, toward elimination of such limits altogether.⁴² The Commission has been careful to balance two competing concerns when considering proposals by the self-regulatory organizations to change position and exercise limits. The Commission has recognized that the limits can be useful to prevent investors from disrupting the market in securities underlying the options. At the same time, the Commission has determined that limits should not be established in a manner that will unnecessarily discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and

²⁶ *Id.* at 29723–24.

²⁷ *Id.* at 29724.

²⁸ *Id.* The Exchange also provides figures indicating that the average S&P 500 Index market capitalization was \$11,818,270,341,270 for year 2011 and \$12,547,946,920,000 for the period January 1, 2012 to April 19, 2012. *Id.*

²⁹ See Notice, 77 FR at 29723. In this context, the Exchange notes the observation of the Dutt-Harris Paper that the manipulation of such instruments as U.S. exchange-traded, cash-settled derivative contracts requires “very large trades that are costly to make and easy to detect through conventional surveillance,” and argues that the same observation applies equally to SPY options. *Id.*

³⁰ See Notice, 77 FR at 29724; see also NYSE Amex Options Rule 906. Additionally, the Exchange notes that Rule 15c3–1 under the Act imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. See Notice, 77 FR at 29724.

³¹ See Notice, 77 FR at 29724–25.

³² *Id.*

³³ See Andrie Letter.

³⁴ *Id.*

³⁵ See CBOE Letter. In Amendment No. 1 the Exchange responded to this comment by stating explicitly that the hedge reporting requirements of NYSE Amex Options Rule 906(b) apply to SPY options.

³⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ See, e.g., Securities Exchange Act Release No. 45236 (January 4, 2002), 67 FR 1378 (January 10, 2002) (SR-Amex-2001-42).

³⁹ See, e.g., Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR-CBOE-2002-26).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² The Commission's incremental approach to approving changes in position and exercise limits for option products overlying certain ETFs is well-established. See Securities Exchange Act Release No. 64695 (June 17, 2011), 76 FR 36942, n. 19 and accompanying text (June 23, 2011) (SR-Phlx-2011-58) (approving increase of SPY option position limit to 900,000 contracts).

market-makers from adequately meeting their obligations to maintain a fair and orderly market.⁴³

The Commission has carefully considered the Exchange's proposal. The Exchange argues that SPY options are ultimately derivative of the S&P 500 Index, and should therefore be treated, from a position limit perspective, similarly to index options based on the S&P 500 which have no position limits, such as SPX and SPXPM. However, in reviewing the Exchange's arguments, the Commission considered certain noteworthy differences that exist, in its view, between SPY options and those index option products.

Among other things, SPX and SPXPM are cash-settled options on the S&P 500 Index. SPY options, on the other hand, are physically-settled options on a single security—the SPY ETF. Moreover, SPY options settle into shares of the SPY ETF, a single security, the performance of which, in turn, generally corresponds to the performance of the S&P 500 Index. Thus, unlike SPX and SPXPM, SPY options are indirectly based on the performance of the individual components of the S&P 500 Index.

Nevertheless, in spite of such differences, the Commission believes that SPY options have certain characteristics that serve to mitigate the concerns that position limits are designed to address. As the Exchange has represented, SPY options are the most actively traded options in terms of ADV. That, in combination with the depth and liquidity of the markets for the underlying SPY ETF as well as the component securities of the S&P 500 Index, and the surveillance capabilities of the Exchange, support the elimination of position limits for SPY options while still helping to ensure that large positions in such options will not unduly disrupt trading in the options or in the underlying SPY ETF. Given the Exchange's belief that eliminating position limits will afford investors more flexibility in meeting their particular investment, hedging, and trading needs, the Commission believes that it is consistent with the Act and appropriate, at this time, to allow SPY options to be traded on the Exchange without position limits on a pilot basis. The Commission believes that eliminating position limits on the highly liquid SPY options represents the next step of a measured approach to position limits on these options.

⁴³ See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (SR-CBOE-98-23).

As an initial matter, the Commission notes that certain characteristics unique to SPY options, taken together, significantly mitigate concerns regarding manipulation or potential disruptions of the markets for SPY options or the underlying SPY ETF. Importantly, and as supported by the figures the Exchange has provided, the markets for SPY options, the underlying SPY ETF, and the component securities upon which the S&P 500 Index is based are extremely deep and liquid.⁴⁴ Figures provided by the Exchange also reflect enormous capitalization of both the SPY ETF and the S&P 500 Index.⁴⁵ Given these characteristics, the Commission believes that removing position limits may benefit investors by bringing additional depth and liquidity, in terms of both volume and open interest, to SPY option classes without raising significant concerns about manipulation or potential market disruption. As set forth in more detail below, however, the Commission is approving the proposal on a pilot basis, during which the Exchange will monitor and report to the Commission on the impact of the removal of SPY option position limits on the SPY option market as well as the markets for the underlying securities.

The Commission also believes that the Exchange's reporting requirements and surveillance systems should enable it to detect and deter any trading abuses that might arise from the elimination of position limits for SPY options.⁴⁶ These safeguards also should enable the Exchange to monitor large positions to identify instances of potential risk and provide the Exchange with the information to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account.

In this regard, the Commission believes that financial requirements imposed by the Exchange and the Commission help allay concerns that an Exchange member or its customer may try to maintain an inordinately large, unhedged SPY option position. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/

⁴⁴ See Notice, 77 FR at 29723–24.

⁴⁵ *Id.* at 29724. The Commission also notes that, according to the Exchange, the creation and redemption mechanism for SPY ETF shares is robust, as evidenced by its close tracking of its benchmark index, and limited only by the number of shares available in the component securities of the S&P 500 Index. *Id.*

⁴⁶ See Notice, 77 FR at 29724. The Commission also expects that the Exchange's surveillance procedures should enable the Exchange to assess and respond to market concerns at an early stage.

or capital that a member must maintain for a large position held by it or by its customer.⁴⁷ The Exchange also has the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines a higher requirement is warranted.⁴⁸ In addition, Rule 15c3–1 imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. Further, the OCC will serve as the counter-party guarantor in every exchange-traded transaction.

As the Exchange notes, NYSE Amex Options Rule 906(a) requires Exchange members to report to the Exchange any account with an aggregate position (whether long or short) of 200 or more options contracts where the underlying security is a stock or ETF share.⁴⁹ In addition, as the Exchange sets forth in Amendment No. 1, NYSE Amex Options Rule 906(b) requires each member (other than an Exchange market-maker) that maintains a position in excess of 10,000 non-FLEX equity option contracts on the same side of the market, on behalf of its own account or for the account of a customer, to report to the Exchange whether and how such position is hedged.⁵⁰ If the position is under-hedged, pursuant to Rule 906(b), the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position.⁵¹ CBOE suggests that the Exchange's proposal lacks a hedge reporting requirement,⁵² but the Exchange affirms in Amendment No. 1 that the requirements of Rule 906(b) apply to SPY options.⁵³ Moreover, the Exchange asserts in Amendment No. 1 that the hedge reporting requirements of Rule 906(b) are actually more stringent than those cited in the CBOE Letter applicable to certain index options.⁵⁴ The Commission believes that, if problems were to occur during the Pilot Period, the market surveillance of large positions should help the Exchange to take the appropriate action to avoid any manipulation or market risk concerns.⁵⁵

⁴⁷ The Commission's net capital rule, Rule 15c3–1 under the Act, requires a capital charge equal to the maximum potential loss on a broker-dealer's aggregate index position over a + (-) 10% market move.

⁴⁸ See NYSE Amex Options Rule 462(e).

⁴⁹ See NYSE Amex Options Rule 906(a).

⁵⁰ See NYSE Amex Options Rule 906(b).

⁵¹ *Id.*

⁵² See CBOE Letter.

⁵³ See Amendment No. 1 to the proposed rule change.

⁵⁴ *Id.*

⁵⁵ In addition to the aforementioned reporting requirements, the Commission notes that the Exchange would have, through its membership in

The Commission believes further that, to the extent that the elimination of SPY option position limits results in movement of trading interest from the OTC market onto the Exchange,⁵⁶ transparency in the SPY option market would be enhanced, which is a benefit for investors.

Notwithstanding the protections discussed above, the Commission believes that a prudent approach is warranted with respect to the Exchange's proposal to eliminate position limits for SPY options. In this regard, the Commission believes that the risks of manipulation and potential market disruption are significantly mitigated as discussed above. To the extent the potential for adverse effects on the markets for the SPY ETF or the S&P 500 component securities underlying the SPY ETF continues to exist, the Exchange's proposal to implement this change on a pilot basis should help to address this concern. Accordingly, the Commission is approving the proposal, as amended, on a fourteen-month pilot basis.⁵⁷ Within thirty (30) days of the end of the Pilot Period the Exchange will be required to submit to the Commission the Pilot Report. The Pilot Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY contract, particularly at expiration. The Pilot Report will also detail the size and different types of strategies employed with respect to positions established in SPY options; note whether any problems, in the underlying SPY ETF or otherwise, arose as a result of the no-limit approach; and include any other information that may be useful in evaluating the effectiveness of the pilot program. Furthermore, if the pilot is not extended or permanently approved by the end of the Pilot Period, the pre-pilot position limit for SPY options of 900,000 contracts on the same side of the market will go back into effect.

The Commission expects that, throughout the Pilot Period, the Exchange will monitor for any problems and collect and analyze on an ongoing basis the data and information that the

the Intermarket Surveillance Group, access to information concerning the trading of the securities underlying the S&P 500 Index, *i.e.*, the securities that are used to create or redeem SPY ETY shares.

⁵⁶ See Andrie Letter.

⁵⁷ The Commission took a similarly measured approach to the first proposals to eliminate position limits for certain broad-based index options by approving those proposals on a pilot basis. *See, e.g.*, Securities Exchange Act Release Nos. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (SR-CBOE-98-23); 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (SR-Amex-98-38).

Exchange ultimately intends to include in the Pilot Report. The Commission also expects that the Exchange will take prompt action, including timely communication with the Commission and with other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

The Commission finds good cause to approve the filing, as amended by Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, by limiting the proposed rule change to a pilot program, the amendment narrows the scope of the proposal. Moreover, the proposal, which in its original version would have eliminated position limits permanently, was open for comment, as is usual, for twenty-one days after publication and generated only two responses—one of which supported the proposal and one that did not raise objection to it.⁵⁸ Further, the Pilot Report and the data that the Exchange commits in Amendment No. 1 to provide to the Commission enhance the proposal by adding a component that should help the Exchange and the Commission assess the impact of eliminating SPY option position limits. In addition, Amendment No. 1 enhances the proposal by making explicit that the hedge reporting requirement of NYSE Amex Options Rule 906(b) applies to SPY options. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve the filing, as amended by Amendment No. 1 to the proposed rule change, on an accelerated basis.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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-NYSEAmex-2012-29 on the subject line.

⁵⁸ See Andrie Letter and CBOE Letter.

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-NYSEAmex-2012-29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2012-29 and should be submitted on or before September 12, 2012.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵⁹ that the proposed rule change (SR-NYSEAmex-2012-29) be, and it hereby is, approved, as amended, on a fourteen-month pilot basis set to expire on October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁰

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012-20575 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

⁵⁹ 15 U.S.C. 78s(b)(2).

⁶⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67671; File No. SR-C2-2012-026]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Its Automatic Order Handling Process

August 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 2, 2012, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding its automatic order handling process. The text of the proposed rule change is available on the Exchange's Web site at <http://www.c2exchange.com/Legal/>, 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 its rules regarding its automatic order handling process. The proposed rule

change adds paragraph (h) to Rule 6.12 to codify how the System³ handles market orders to sell in option series for which the national best bid in the series is zero ("no-bid series").⁴ If the System receives during the trading day or has resting in the electronic book (the "Book") after the opening of trading a market order to sell in a no-bid series, it handles the order as follows:

- If the Exchange best offer in that series is less than or equal to \$0.30, then the System will consider, for the remainder of the trading day, the market order as a limit order to sell with a limit price equal to the minimum trading increment applicable to the series and enter the order into the Book behind limit orders to sell at the minimum increment that are already resting in the Book.

- If the Exchange best offer in that series is greater than \$0.30, then the market order will be cancelled.

The Exchange's Rules are currently silent on how the System handles market orders to sell in no-bid series. The Exchange believes that proposed Rule 6.12(h) will clarify for investors how the System handles these orders.⁵ The Exchange believes that the automatic handling of market orders to sell in no-bid series if the Exchange best offer is less than or equal to \$0.30 facilitates the System's automatic handling process. Additionally, the \$0.30 threshold serves as a protection feature for investors in certain situations, such as when a series is no-bid because the last bid traded just prior to the entry of the market order to sell. The purpose of this threshold is to limit the automatic handling of market orders to sell in no-bid series to only those for true zero-bid options, as options in no-bid series with an offer of more than \$0.30 are likely not worthless.

For example, if the System receives a market order to sell in a no-bid series with a minimum increment of \$0.01 and the Exchange best offer is \$0.20, the System will consider, for the remainder

of the trading day, the order as a limit order with a price of \$0.01 and submit it to the Book behind other limit orders to sell at the minimum increment that are already resting in the Book. At that point, even if the series is no-bid because, for example, the last bid just traded and the limit order trades at \$0.01, the next bid entered after the trade would not be higher than \$0.20.⁶ However, if the System receives a market order to sell in a no-bid series with a minimum increment of \$0.01 and the Exchange best offer is \$1.20 (because, for example, the last bid of \$1.00 just traded), the System will instead cancel the order. It would be unfair to the entering firm to let its market order trade as a limit order for \$0.01 because, for example, the firm submitted the order during the brief time when there were no disseminated bids in a series trading significantly higher than the minimum increment.

The \$0.30 threshold has been in place for a number of years, and the Exchange believes the threshold is reasonable. The Exchange notes that this threshold is less than the acceptable price range ("APR") in the price check parameter provision in Rule 6.17. Pursuant to that Rule, the System will not automatically execute a marketable order if the width between the national best bid and national best offer is not within the APR, which for an option contract with a bid of less than \$2 may not be less than \$0.375.⁷ Instead, the System will cancel the order. Notwithstanding this provision, proposed Rule 6.12(h) allows for the potential execution of market orders to sell in no-bid series with offers

⁶ If the order does not execute during the trading day as a limit order and remains outstanding after the close of trading (i.e., a GTC order), the System at that time will no longer consider the order as a limit order and will again handle the order as a market order to sell after the close of trading. The market order will stay on the Book until the opening of the next trading day (or until cancelled), at which point it may execute during the open or, if it remains unexecuted after the opening of trading, it will either execute with the best bid at the time or, if the series is still no-bid, again be handled pursuant to proposed Rule 6.12(h).

⁷ Rule 6.17 also provides that the System will not automatically execute eligible orders that are marketable if the execution would follow an initial partial execution on the Exchange and would be at a subsequent price that is not within an acceptable tick distance from the initial execution. The APR for purposes of Rule 6.17 is determined by the Exchange on a class-by-class basis and may not be less than \$0.375 between the bid and offer for each option contract for which the bid is less than \$2, \$0.60 where the bid is at least \$2 but does not exceed \$5, \$0.75 where the bid is more than \$5 but does not exceed \$10, \$1.20 where the bid is more than \$10 but does not exceed \$20, and \$1.50 where the bid is more than \$20. An "acceptable tick distance" [sic] less than two minimum increments.

³ The System is the automated trading system used by the Exchange for the trading of options contracts.

⁴ The Exchange notes that, for singly listed series, the national best bid is equivalent to the Exchange's best bid and the national best offer is equivalent to the Exchange's best offer.

⁵ The Exchange notes for informational purposes that other options exchanges have rules that address how their systems handle market orders to sell no-bid series. See, e.g., NASDAQ OMX PHLX ("Phlx") Rule 1080(i) (which provides that the Phlx system will convert market orders to sell a no-bid series to limit orders to sell with a limit price of the minimum trading increment applicable to that series that are received when Phlx's disseminated quotation in the series has a bid/ask differential less than or equal to \$0.25, and will place the limit orders on the book).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

less than [sic]⁸ \$0.30 as limit orders at the price of a minimum increment. If the threshold in proposed Rule 6.12(h) were higher, the risk of having a market order trade at a minimum increment in a series that is not truly no-bid would increase. This risk of execution is not present in the price check parameter provision of Rule 6.17, and therefore the Exchange believes a wider APR is appropriate for that provision.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change protects investors and the public interest by providing investors with more clarity regarding the System's automatic order handling process—specifically how it processes market orders to sell in no-bid series. The Exchange believes that the automated handling of market orders to sell in no-bid series if the Exchange best offer is \$0.30 or less assists with the maintenance of fair and orderly markets and protects investors and the public interest because it provides for automated handling of these orders, ultimately resulting in more efficient executions of these orders. The Exchange believes that the \$0.30 threshold also protects investors and assists with the maintenance of fair and orderly markets by preventing executions of market orders to sell in no-bid series with higher offers at potentially extreme prices in series that are not truly no-bid. The Exchange believes this threshold appropriately reflects the interests of investors, as options in no-bid series with offers higher than \$0.30 are likely not worthwhile. The Exchange believes an investor would not want automatic handling of these orders in this

situation, as such handling could result in a sale at a significantly lower price than the investor could otherwise obtain if the System cancelled the order, and the investor later resubmitted the order when the series was no longer no-bid.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-C2-2012-026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-C2-2012-026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2012-026 and should be submitted on or before September 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-20574 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

⁸ The Commission notes that C2's proposed rule text actually specifies that the Exchange would convert market orders in no-bid series to limit orders where the Exchange's best offer is less than or equal to \$.30 (emphasis added).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 200.30-3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2012-0026]

Charging Standard Administrative Fees for Nonprogram-Related Information**AGENCY:** Social Security Administration.**ACTION:** Notice of standard administrative fees for providing information and related services for nonprogram-related purposes.

SUMMARY: We are announcing the standardized administrative fees we will charge to recover our full cost of providing information and related services for nonprogram purposes we provide to the public. Previously, the fees we charged for nonprogram information requests were not standardized. Standard fee implementation will ensure fees are consistent and that we collect the full cost of supplying our information when a request is for a purpose not directly related to our administration of a program under the Social Security Act (Act). We expect the implementation of standard fees across all field offices will allow us to provide consistent service to members of the public who request information from us for nonprogram-related purposes.

DATES: The standard administrative fees will apply to requests for information for nonprogram-related purposes we receive on or after August 22, 2012.

FOR FURTHER INFORMATION CONTACT: Karen Huelskamp, Social Security Administration, Office of Finance, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-4890 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: We administer several benefit programs under the Act, including the Retirement and Survivors Insurance (RSI), Disability Insurance (DI), and Supplemental Security Income (SSI) programs. To administer these programs, we collect information from individuals and entities, such as other governmental agencies, and then store this information in our systems. Our employees can retrieve this information by accessing our computer systems. Generally, we use the information we collect and store for purposes of administering the Social Security benefit programs. However, sometimes individuals ask us to release this

information to appointed representatives, private companies, or other third parties. When we release this information for a purpose not related to implementation of our programs, we consider it a nonprogram-related service. Nonprogram-related services are not within our mission, and we are required to recover the cost of providing those services.

Section 1106 of the Act and the Privacy Act¹ authorize the Commissioner of Social Security to promulgate regulations regarding agency records and information and to charge fees for providing information and related services. Our regulations and operating instructions identify when we will charge fees for information.² Under our regulations, whenever we determine a request for information is for any purpose not directly related to the administration of the Social Security programs, we require the requester to pay the full cost of providing the information.

We receive a large number of requests for nonprogram-related information from third parties, such as private companies, as well as individuals. The number of applications for RSI, DI, and SSI we receive continues to grow. In addition to processing applications, our field offices are responsible for other program-related workloads, such as conducting continuing disability reviews and processing requests for original Social Security Numbers (SSN) and replacement Social Security cards. These services relate directly to our mission and the programs we administer under the Act. Nonprogram-related services are not within our mission, and we recover our full cost when we perform those services, with certain limited exceptions.³

The existing process for determining and charging fees on a case-by-case basis has become unwieldy and inefficient. Consequently, we are implementing standard fees that are calculated to reflect the full cost of providing information for nonprogram-related purposes, consistent with section 1106 of the Act and our regulations, 20 CFR 402.175(a). This uniform approach will allow the public to understand the fee associated with a particular request for nonprogram-related information and make it easier for our field offices to determine the full cost of supplying the nonprogram-related information. We will implement

¹ 42 U.S.C. 1306 and 5 U.S.C. 552a, respectively.

² See 20 CFR 402.170, 402.175; Program Operations Manual System (POMS) GN 03311.005.

³ Office of Management and Budget (OMB), Circular A-25, *User Charges*.

the new fee schedule at all of our field offices simultaneously. For nonprogram-related requests not listed below, we will continue to charge fees calculated on a case-by-case basis to recover our full cost of supplying the information.

The new standard fee schedule per request:

Copy an Electronic Folder	\$49
Copy a Paper Folder	86
Letter Forwarding	35
3rd Party Manual SSN Verification ..	29
Regional Office Certification	48
Office of Central Operations Certification	32
W2/W3 Requests	38
Record Extract	33

We will evaluate these standard fees at least every two years to ensure we continue to capture the full costs associated with providing information for nonprogram-related purposes. We will require advance payment of the standard fee by check, money order, or credit card. We will not accept cash. If we revise any of the standard fees, we will publish another notice in the **Federal Register**.

Additional Information

Additional information is available on our Web site at <http://socialsecurity.gov/pgm/business.htm> or by written request to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

Dated: August 15, 2012.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2012-20559 Filed 8-21-12; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 7986]

60-Day Notice of Proposed Information Collection: Exchange Visitor Program Participant Survey—Summer Work Travel Program

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 22, 2012.

ADDRESSES: You may submit comments identified by any of the following methods:

- Persons with access to the Internet may view and comment on this notice by going to the regulations.gov Web site at <http://www.regulations.gov/#!home>. You can search by selecting "Notice" under Document Type, enter the Public Notice number, and check "Open for Comment". Search, and then to view the document, select an Agency.

- *Mail (paper, disk, or CD-ROM submissions):* U.S. Department of State, Office of Exchange Coordination and Designation, SA-5, 2200 C Street NW., Floor 5, Washington, DC 20522-0505

- *Email:* jexchanges@state.gov.

You must include the information collection title and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Robin J Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA-5, Floor 5, 2200 C Street NW., Washington, DC 20522-0505, who may be reached at 202-632-2805 or email at jexchanges@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Exchange Visitor Program Participant Survey—Summer Work Travel Program.

- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/EC.

- *Form Number:* SV 2012-0004.

- *Respondents:* Exchange Visitor Program participants in the Summer Work Travel category.

- *Estimated Number of Respondents:* 109,000.

- *Estimated Number of Responses:* 109,000.

- *Average Hours per Response:* 30 minutes.

- *Total Estimated Burden Time:* 54,500 hours.

- *Frequency:* On occasion.

- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the effective administration of the Summer Work Travel category of the Exchange Visitor Program.

- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: This collection of information is under the provisions of the Mutual Educational and Cultural Exchange Act, as amended, and its implementing regulations (22 CFR Part 62). Summer Work Travel Participant Surveys will be sent to all Summer Work Travel participants at least once during their program. Sponsors are required to ensure that the link to the Survey is provided to all exchange participants in orientation materials, follow-up emails, etc. Although the survey is voluntary, the Department is trying to capture a high volume of responses to trend participant satisfaction, complaints, safety and welfare.

Methodology: The collection will be submitted to the Department electronically through Survey Monkey.

Dated: August 14, 2012.

Robin J. Lerner,

Deputy Assistant Secretary, Office of Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012-20678 Filed 8-21-12; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 7989]

U.S. Department of State Advisory Committee on Private International Law (ACPIIL): Notice of Public Meeting on Draft Principles Regarding the Enforceability of Close-Out Netting

The Office of the Assistant Legal Adviser for Private International Law, Department of State, hereby gives notice of a public meeting on UNIDROIT's draft Principles Regarding the Enforceability of Close-out Netting. Close-out netting is a contractual mechanism used by financial institutions and other market participants to reduce their risk exposure, and is thus a key tool for preserving the stability of the financial system. A study group organized by UNIDROIT (the International Institute for the Unification of Private Law) produced a draft set of principles that are intended to serve as a guide for evaluating whether the legal systems in

various jurisdictions around the world adequately recognize the enforceability of netting provisions. The draft principles and background documents are available on the UNIDROIT Web site (<http://www.unidroit.org/english/studies/study78c/main.htm>). On October 15, 2012, UNIDROIT will be holding an intergovernmental meeting at which the draft principles will be further developed, although it is not expected that the principles will be finalized until next year.

The purpose of this public meeting is to obtain the views of concerned stakeholders on these topics in advance of the UNIDROIT meeting. This is not a meeting of the full Advisory Committee.

Time and Place: The meeting will take place on Friday, September 21, 2012, from 10 a.m. to 1 p.m. at the Federal Reserve Bank of New York, 33 Liberty Street, New York, NY. Participants should arrive between 9:30 a.m. and 9:45 a.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. For pre-clearance purposes, those planning to attend in person are requested to email or phone Tricia Smeltzer (smeltzertk@state.gov, 202-776-8423) or Niesha Toms (tomsnn@state.gov, 202-776-8420) and provide your full name and affiliation. Attendees are requested to bring a photo ID such as a driver's license or a passport. This will greatly facilitate entry.

A member of the public needing reasonable accommodation should advise Ms. Smeltzer or Ms. Toms not later than September 12, 2012. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please contact Ms. Smeltzer or Ms. Toms to obtain the call-in number and other information.

Dated: August 14, 2012.

Keith Loken,

Assistant Legal Advisor, Office of Private International Law, Office of the Legal Advisor, Department of State.

[FR Doc. 2012-20691 Filed 8-21-12; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Government/Industry Aeronautical Charting Forum Meeting**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet October 23, 2012 from 8:30 a.m. to 5:00 p.m. The Charting Group will meet October 24 and 25, 2012 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be hosted by Air Line Pilots Association at 535 Herndon Parkway, Herndon, VA 20192.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS-420, 6500 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954-5852; fax: (405) 954-2528; Email: thomas.e.schneider@faa.gov.

For information relating to the Charting Group, contact Valerie S. Watson, FAA, National Aeronautical Navigation Products (AeroNav Products), Quality Assurance & Regulatory Support, AJV-3B, 1305 East-West Highway, SSMC4, Station 4640, Silver Spring, MD 20910; telephone: (301) 427-5155; fax: (301) 427-5412; Email: valerie.s.watson@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from October 23 through October 25, 2012, from 8:30 a.m. to 5:00 p.m. at the Air Line Pilots Association, at their offices at 535 Herndon Parkway, Herndon, VA 20192.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures. The Charting Group agenda will include briefings and discussions on recommendations regarding

aeronautical charting specifications, flight information products, and new aeronautical charting and air traffic control initiatives. Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by October 5, 2012, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section not later than October 5, 2012. Public statements will only be considered if time permits.

Issued in Washington DC, on August 14, 2012.

Valerie S. Watson,

Co-Chair, Aeronautical Charting Forum.

[FR Doc. 2012-20488 Filed 8-21-12; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Noise Exposure Map Notice, Orlando Sanford International Airport, Sanford, FL**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the Sanford Airport Authority for Orlando Sanford International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is August 16, 2012.

FOR FURTHER INFORMATION CONTACT: Allan Nagy, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Citadel International Building, Suite 400, Orlando, FL 32822, 407-812-6331.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Orlando Sanford International Airport are in compliance with applicable requirements of Title 14 Code of Federal Regulations (CFR) Part 150, effective August 16, 2012. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (the Act), an airport operator may submit to

the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of 14 CFR Part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the airport operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by Sanford Airport Authority. The documentation that constitutes the "Noise Exposure Maps" as defined in Section 150.7 of 14 CFR part 150 includes: Table 1: 2009 and 2016 Annual Operations; Table 2: 2009 Domestic and International Air Carrier Fleet Mix; Table 3: 2016 Domestic and International Air Carrier Fleet Mix; Table 4: 2009 Air Taxi Operations and Fleet Mix; Table 5: 2016 Air Taxi Operations and Fleet Mix; Table 6: 2009 Local and Itinerant General Aviation Operations; Table 7: 2016 Local and Itinerant General Aviation Operations; Table 8: 2009 General Aviation Operations and Fleet Mix; Table 9: 2016 General Aviation Operations and Fleet Mix; Table 10: 2009 and 2016 Domestic and International Air Carrier Stage Length Percentages; Table 11: 2009 Itinerant Runway Use Percentages; Table 12: 2016 Itinerant Runway Use Percentages; Table 13: 2009 and 2016 Local Runway Use Percentages; Figure 1: East Flow Flight Tracks; Figure 2: West Flow Flight Tracks; Figure 3: Local Flight Tracks; Figure 4: Existing Land Use; Figure 5: 2011 NEM Contours; Figure 6: 2016 NEM Contours; Figure 7: Future Land Use; Appendix I: Airport Facilities and Airspace; Appendix II: FAA Forecast Approval Letter; Appendix III: Airport Sponsors Noise Exposure Map Certification (including Table 1); Appendix V: FAA AEE Approval of Non-Standard INM Substitute Aircraft. The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable

requirements. This determination is effective on August 16, 2012.

FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act.

These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of 14 CFR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full Noise Exposure Maps documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Citadel International Building, Suite 400, Orlando, FL 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, FL on August 16, 2012.

Bart Vernace,

Manager, Orlando Airports District Office.

[FR Doc. 2012-20659 Filed 8-21-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2012-34]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before September 11, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA-2012-0832 using any of the following methods:

- *Government-wide rulemaking web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.

- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Docket: To read background documents or comments received, go to

<http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas ARM-105, (202) 267-7626, FAA, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 15, 2012.

Lirio Liu,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA-2012-0832.

Petitioner: Corbi Air, Inc.

Sections of 14 CFR Affected: §§ 61.113(a) and 91.327(a).

Description of Relief Sought: Corbi Air Inc, petitioned for an exemption from § 91.327(a) to allow them to operate special light-sport aircraft for compensation or hire during pipeline patrol. They also petitioned for an exemption from § 61.113(a) which would allow them to compensate private pilots to conduct these operations.

[FR Doc. 2012-20683 Filed 8-21-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2012-0006-N-9]

Notice and request for comments

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on June 20, 2012, volume 77, page number 119.

DATES: Comments must be submitted on or before September 21, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Wylie, Office of Planning and

Administration, RPD-3, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 20, Washington, DC 20590 (telephone: (202) 493-6353), or Ms. Kimberly Toone, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On June 20, 2012, FRA published a 60-day notice in the **Federal Register** soliciting comments on ICR that the agency was seeking OMB approval. 77 FR 37092. FRA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Notice of Funds Availability and Solicitation of Applications for Grants under the Railroad Rehabilitation and Repair Grant Program.

OMB Control Number: 2130-0580.

Type of Request: Revision of a currently approved collection.

Affected Public: State and local governments, government sponsored authorities and corporations, railroads.

Abstract: The Railroad Rehabilitation and Repair Grant Program (Catalog of Federal Domestic Assistance (CFDA) Program Number 20.314), was originally supported with up to \$20,000,000 of Federal funds provided to FRA as part of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110-329, September 30, 2008). On May 27, 2009, FRA selected 12 projects, totaling \$15 million under this program. On August 5, 2010, FRA selected 10 more projects for the remaining funds. A few revisions to grant agreements and close-out of grants are the only remaining activities for this program.

Funds provided under this program may constitute no more than 80 percent of the total cost of a selected project, with the remaining cost funded from other non-Federal sources. Projects include repairs and rehabilitation to Class II and Class III railroad infrastructure damaged by hurricanes, floods, and natural disasters that are located in counties that were identified in a Disaster Declaration for Public Assistance issued by the President (<http://www.fema.gov/news/disasters.fema#sev1>).

Class II and Class III railroad infrastructure repaired and rehabilitated include railroad rights-of-way, bridges, signals and other infrastructure which are part of the general railroad system of transportation and primarily used by railroads to move freight traffic. FRA anticipates that no further public notification will be made with respect to this program.

Form Number(s): N/A.

Annual Estimated Burden Hours: 1,048 hours.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: oira_submissions@omb.eop.gov.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections;

ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501-3520.

Issued in Washington, DC, on August 15, 2012.

Michael Logue,

Associate Administrator for Administration, Federal Railroad Administration.

[FR Doc. 2012-20628 Filed 8-21-12; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35660]

GWI Voting Trust and R. Lawrence McCaffery, Voting Trustee—Control Exemption—RailAmerica, Inc., et al.

GWI Voting Trust (Voting Trust), a noncarrier, created by Genesee & Wyoming Inc. (GWI),¹ a noncarrier holding company, and R. Lawrence McCaffery, a noncarrier individual (Voting Trustee), (collectively, applicants) have filed a verified notice of exemption to acquire control of RailAmerica, Inc. (RailAmerica) and the 41 United States Class III rail carriers that RailAmerica indirectly controls (the RailAmerica Railroads).

GWI has created the Voting Trust so that the common stock of RailAmerica will be placed into an independent voting trust during the review of an application for approval that is pending before the Board in Docket No. FD 35654, *Genesee & Wyoming Inc.—Control—RailAmerica, Inc., et al.* In that proceeding, GWI is seeking approval of such control.

RailAmerica controls the following Class III rail carriers in the United States: Alabama & Gulf Coast Railway L.L.C., Arizona & California Railroad Company, Bauxite & Northern Railway Company, California Northern Railroad Company, Carolina Piedmont Division, Cascade and Columbia River Railroad Company, Central Oregon & Pacific Railroad, Inc., The Central Railroad Company of Indiana, Central Railroad Company of Indianapolis, Chesapeake & Albemarle Railroad Co., Inc., Chicago, Ft. Wayne & Eastern, Conecuh Valley

¹ Applicants state that GWI is participating in this proceeding as the settlor.

Railway, Connecticut Southern Railroad, Inc., Dallas, Garland & Northeastern Railroad, Inc., Eastern Alabama Railway, LLC, Grand Rapids Eastern Railroad Inc., Huron & Eastern Railway Company, Inc., Indiana & Ohio Railway Company, Indiana Southern Railroad, LLC., Kiamichi Railroad Company L.L.C., Kyle Railroad Company, Marquette Rail, LLC, The Massena Terminal Railroad Company, Mid-Michigan Railroad, Inc., Michigan Shore Railroad, Inc., Missouri & Northern Arkansas Railroad Company, Inc., New England Central Railroad, Inc., North Carolina & Virginia Railroad Company, LLC, Otter Tail Valley Railroad Company, Inc., Point Comfort & Northern Railway Company, Puget Sound & Pacific Railroad, Rockdale, Sandow & Southern Railroad Company, San Diego & Imperial Valley Railroad Company, Inc., San Joaquin Valley Railroad Co., South Carolina Central Railroad Company, LLC, Texas Northeastern Railroad, Three Notch Railway, LLC, Toledo, Peoria & Western Railway Corporation, Ventura County Railroad Corp., Wellsboro & Corning Railroad, LLC and Wiregrass Central Railway, LLC.

Applicants state that, pursuant to an agreement and plan of merger, Jaguar Acquisition Sub Inc., a wholly owned subsidiary of GWI, will merge with and into RailAmerica, with RailAmerica being the surviving corporation. As a result of the merger, GWI will obtain direct control of RailAmerica and indirect control of the RailAmerica Railroads. Upon completion of the merger, GWI plans immediately to place the shares of RailAmerica into the Voting Trust that has been established in accordance with the Board's regulations at 49 CFR 1013.² Applicants state that, because they would have temporary voting control of more than one railroad, they are filing this notice of exemption to confirm that, if and when the stock of RailAmerica is placed into the Voting Trust, they will have appropriate authority to control RailAmerica and the RailAmerica Railroads.³ Applicants also note that the

² GWI has submitted a copy of the voting trust agreement to the Board for an informal, nonbinding opinion asking whether the voting trust would effectively insulate GWI from unauthorized acquisition of control of RailAmerica, pending Board review of the control application filed in FD 35654. In a letter dated August 3, 2012, the Director, Office of Proceedings, informed GWI that it is her opinion that the proposed voting trust agreement would effectively insulate GWI from unauthorized control of RailAmerica.

³ Applicants state that, pursuant to the voting trust agreement, the Voting Trust will only hold the shares of RailAmerica until the Board acts on the application. If the application is approved, the

Voting Trustee will be entitled to vote all of the stock held by the Voting Trust.

According to applicants, they will not be in control of any railroads prior to the stock being placed in the Voting Trust, and that there will be no substantial change in the management or operation of the RailAmerica Railroads during the time they are in control of them.

The transaction may be consummated on or after September 5, 2012 (30 days after the notice of exemption was filed).

Applicant states that: (1) The rail lines of the RailAmerica Railroads do not connect with any rail lines in the corporate family of the Voting Trust or the Voting Trustee (they have none); (2) the transaction is not part of a series of anticipated transactions that would connect these rail lines with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 29, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35660, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW., Washington, DC 20036 and Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

shares of RailAmerica will be distributed to GWI. If the application is denied, the shares of RailAmerica (or the controlled railroads) will be sold to buyers approved by the Board in accordance with the terms of the voting trust agreement.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: August 17, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012-20665 Filed 8-21-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35655]

Arkansas-Oklahoma Railroad, Inc.— Lease and Operation Exemption—Line of Union Pacific Railroad Company

Arkansas-Oklahoma Railroad, Inc. (AOK), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company and to operate approximately 1.5 miles of rail line between milepost 446.5, at/near Shawnee, and milepost 445.0, east of Shawnee at Brangus Road, in Pottawatomie County, Okla.

AOK states that consummation of the transaction will occur on or about September 4, 2012. The earliest the transaction can be consummated, however, is September 5, 2012, the effective date of the exemption (30 days after the exemption was filed).

AOK certifies that its projected annual revenues as a result of this transaction will not exceed \$5 million or result in the creation of a Class II or Class I rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than August 29, 2012 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35655, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Daniel A. LaKemper, General Counsel, Arkansas-Oklahoma Railroad, Inc., P.O. Box 185, Morton, IL 61550.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: August 17, 2012.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2012-20651 Filed 8-21-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 519 (Sub-No. 5)]

Notice of National Grain Car Council Meeting

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of National Grain Car Council meeting.

SUMMARY: Notice is hereby given of a meeting of the National Grain Car Council (NGCC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on Thursday, September 13, 2012, beginning at 1:00 p.m. (CDT) and is expected to conclude at 5:00 p.m. (CDT).

ADDRESSES: The meeting will be held at the Four Seasons Resort at Las Colinas, 4150 North MacArthur Boulevard, Irving, TX 75038. Phone 972-717-0700, Fax 972-717-2550.

FOR FURTHER INFORMATION CONTACT: Thomas Brugman at (202) 245-0281. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877-8339].

SUPPLEMENTARY INFORMATION: The NGCC arose from a proceeding instituted by the Surface Transportation Board's predecessor agency, the Interstate Commerce Commission (ICC), in *National Grain Car Supply—Conference of Interested Parties*, EP 519. The NGCC was formed as a working group to facilitate private-sector solutions and recommendations to the ICC (and now the Board) on matters affecting grain transportation.

The general purpose of this meeting is to discuss rail carrier preparedness to transport the 2012 fall grain harvest. Agenda items include the following: Remarks by Board Chairman Daniel R. Elliott III, Vice-Chairman Francis P. Mulvey (who, together with Brad Hildebrand, Assistant Vice President of Cargill AgHorizons, serves as Co-Chairman for the NGCC), and Commissioner Ann D. Begeman; reports by rail carriers and shippers on grain-service related issues; a report by rail

car manufacturers and lessors on current and future availability of various grain-car types; a presentation by the U.S. Department of Agriculture regarding the changes in rail market share of grain and oilseed transportation; a presentation by the Association of American Railroads about rail time indicators; an update on railroad agricultural contract filings; and an open forum for audience and members to discuss topics of interest related to the agenda. The full agenda, along with other information regarding the NGCC, is posted on the Board's Web site at http://www.stb.dot.gov/stb/rail/graincar_council.html.

The meeting, which is open to the public, will be conducted pursuant to the NGCC's charter and Board procedures. Further communications about this meeting may also be announced through the Board's Web site.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: August 17, 2012.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2012-20664 Filed 8-21-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before October 22, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Joel Goldberger, 202-927-9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at Joel.P.Goldberger@irs.gov.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We Invite Comments On: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, 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 of information on respondents, including 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 the requested information.

Information Collections Open for Comment

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Title: Public Disclosure of Material Relating to Tax-Exempt Organizations.
OMB Number: 1545–1560.

Regulation Project Numbers: REG–246250–96 (T.D. 8816).

Abstract: Under section 6104(e) of the Internal Revenue Code, certain tax-exempt organizations are required to make their annual information returns and applications to tax exemption available for public inspection. In addition, certain tax-exempt organizations are required to comply with requests made in writing or in person from individuals who seek a copy of those documents or, in the alternative, to make their documents widely available. This regulation provides guidance concerning these disclosure requirements.

Current Actions: There is no change to this existing Regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 1,100,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 551,000.

Title: Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

OMB Number: 1545–1695.

Revenue Ruling Number: Revenue Ruling 2000–33.

Abstract: Revenue Ruling 2000–33 specifies the conditions the plan sponsor should meet to automatically defer a certain percentage of its employees' compensation into their accounts in an eligible deferred compensation plan.

Current Actions: There are no changes being made to this revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 Hour.

Estimated Total Annual Burden Hours: 500.

Title: Application of Separate Limitations to Dividends From Non-controlled Section 902 Corporations.

OMB Number: 1545–2014.

Form Number: TD 9452.

Abstract: The AJCA amended the foreign tax credit treatment of dividends from non-controlled section 902 corporations effective for post-2002 tax

years, and the GOZA permitted taxpayers to elect to defer the effective date of these amendments until post-2004 tax years. These regulations require a taxpayer making the GOZA election to file a statement to such effect with its next tax return, and they require certain shareholders wishing to make tax elections on behalf of their controlled foreign corporations or non-controlled section 902 corporations to execute a joint consent (that is retained by one shareholder) and attach a statement to their tax returns. The respondents are primarily domestic corporations owning stock in foreign corporations.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 25.

Title: Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code.

OMB Number: 1545–2148.

Form Number: Form 8928.

Abstract: Form 8928 is used by employers, group health plans, HMOs, and third party administrators to report and pay excise taxes due for failures under sections 4980B, 4980D, 4980E, and 4980G.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes.

Type of Review: This is an extension of a previously approved collection.

Affected Public: Businesses and other for-profit organizations, and Not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 2,348.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the collection of information displays a valid OMB control number.

Title: Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.

OMB Number: 1545–0052.

Form Numbers: Forms 4720 and Form 990–PF.

Abstract: IRC section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Form 990–PF is used for this purpose. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundation and certain related parties. Form 4720 is used by foundations and/or related persons to report prohibited activities in detail and pay the tax on them.

Current Actions: Due to the addition of Schedule M to form 4920, there is an increase in the paperwork burden previously approved by OMB.

Type of Review: This is a revision of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 55,000.

Estimated Total Annual Burden Hours: 11,054,637.

Title: Form 1120–IC–DISC, Interest Charge Domestic International Sales Corporation Return, Schedule K (Form 1120–IC–DISC), Shareholder's Statement of IC–DISC Distributions, and Schedule P (Form 1120–IC–DISC), Intercompany Transfer Price or Commission.

OMB Number: 1545–0938.

Form Numbers: 1120–IC–DISC, Schedules K and P.

Abstract: U.S. corporations that elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report income and deductions. The IC–DISC is not taxed; IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report dealings with suppliers.

Current Actions: There are no changes being made to the forms.

Type of Review: Extension of an approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Total Annual Burden Hours: 242,340.

Approved: August 14, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012-20689 Filed 8-21-12; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Four Central Texas Salamanders and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R2-ES-2012-0035;
4500030114]

RIN 1018-AY22

Endangered and Threatened Wildlife and Plants; Endangered Status for Four Central Texas Salamanders and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Austin blind salamander, Jollyville Plateau salamander, Georgetown salamander, and Salado salamander as endangered under the Endangered Species Act of 1973, as amended (Act), and propose to designate critical habitat for the species. In total, we propose to designate approximately 5,983 acres (2,440 hectares) as critical habitat for the four species. The proposed critical habitat is located in Travis, Williamson, and Bell Counties, Texas.

DATES: We will accept comments received or postmarked on or before October 22, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by October 9, 2012.

Public Informational Sessions and Public Hearings: We will hold two public informational sessions and two public hearings on this proposed rule. We will hold a public informational session from 5:30 p.m. to 6:30 p.m., followed by a public hearing from 7 p.m. to 8:30 p.m., in Round Rock, Texas, on Wednesday, September 5 (see **ADDRESSES**). We will hold a public informational session from 6:30 p.m. to 7:30 p.m., followed by a public hearing from 8 p.m. to 9:30 p.m., in Austin, Texas, on Thursday, September 6 (see **ADDRESSES**). Registration to present oral comments on the proposed rule at the public hearings will begin at the start of each informational session.

ADDRESSES: Document availability: You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0035 or by mail

from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at (<http://www.fws.gov/southwest/es/AustinTexas/>), <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0035, and at the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the above locations.

Written Comments: You may submit written comments by one of the following methods:

(1) **Electronically:** Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS-R2-ES-2012-0035. You may submit a comment by clicking on "Comment Now!"

(2) **By hard copy:** Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2012-0035ES-2012-0035; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

Public informational sessions and public hearings: The September 5, 2012, public informational session and hearing will be held at the Wingate by Wyndham Round Rock, 1209 N. IH 35 North, Exit 253 at Hwy 79, Round Rock, Texas 78664. The September 6, 2012, public informational session and hearing will be held at Thompson Conference Center, 2405 Robert Dedman Drive, Room 2.102, Austin, Texas 78705. People needing reasonable accommodations in order to attend and participate in the public hearings should contact Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd, Suite 200, Austin, TX 78758; by telephone 512-490-0057; or by facsimile 512-490-0974. Persons who use a telecommunications device for the

deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Executive Summary***Why We Need to Publish a Rule*

This is a proposed rule to list the Austin blind salamander (*Eurycea waterloensis*), Jollyville Plateau salamander (*Eurycea tonkawae*), Georgetown salamander (*Eurycea naufragia*), and Salado salamander (*Eurycea chisholmensis*) as endangered.

With this rule, we are proposing to designate the following critical habitat for the four central Texas salamanders:

- Austin Blind salamander: 120 acres (49 hectares)
- Jollyville Plateau salamander: 4,460 acres (1,816 hectares)
- Georgetown salamander: 1,031 acres (423 hectares)
- Salado salamander: 372 acres (152 hectares)

The proposed critical habitat is located within Travis, Williamson, and Bell Counties, Texas.

The Basis for Our Action

Under the Endangered Species Act, we can determine that a species is endangered or threatened based on any of the following five factors: (A) Destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting the species continued existence. Based on our analysis under the five factors, we find that the four central Texas salamanders are primarily threatened by: factors A and D. Therefore, these species qualify for listing, which can only be done by issuing a rule.

The Act requires that the Secretary designate critical habitat for a species, to the maximum extent prudent and determinable, concurrently with making a determination that a species is an endangered or threatened species. Section 4(b)(2) of the Act requires that the Secretary designate critical habitat based upon the best scientific data available, and after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Section 4(b)(2) of the Act provides that the Secretary may exclude any area from critical habitat if he determines that the benefits of excluding that area outweigh the benefits of including it in the

designation, unless such an exclusion would result in the extinction of the species. This “weighing” of considerations under section 4(b)(2) of the Act is the next step in the designation process, in which the Secretary may consider particular areas for exclusion from the final designation.

We are preparing an economic analysis. To ensure that we consider the economic impacts, we are preparing a draft economic analysis of the proposed critical habitat designations. We will use information from this analysis to inform the development of our final designation of critical habitat for these species.

We will seek peer review. We are seeking comments from independent specialists to ensure that our critical habitat designations are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions in these proposed critical habitat designations. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of these species, and ongoing conservation measures for these species and their habitats.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on these species.

(5) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16

U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation, such that the designation of critical habitat may not be prudent.

(6) Specific information on:

(a) The amount and distribution of the four central Texas salamanders’ habitats,

(b) What areas, that are currently occupied by these species, that contain features essential to their conservation,

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change,

(d) What areas not occupied at the time of listing are essential for the conservation of these species and why,

(e) How subterranean populations of these four salamander species are distributed underground, and

(f) The interconnectedness of salamander habitats in terms of hydrology, and whether salamanders are able to move between sites through underground aquifer conduits.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on the four central Texas salamanders and on proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on the four central Texas salamanders and proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final critical habitat designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(10) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act; for example, areas that have a 10(a)(1)(B) permit and habitat conservation plan (HCP) that covers any of these salamanders may be considered for exclusion (potentially including the Four Points HCP that covers Jollyville Plateau salamanders).

(11) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and

understanding, or to better accommodate public concerns and comments.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

The Austin blind and Salado salamanders were included in nine Candidate Notices of Review (67 FR 40657, June 13, 2002; 69 FR 24876, May 4, 2004; 70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011). The listing priority number has remained at 2 throughout the reviews for both species, indicating that threats to the species were both imminent and high in magnitude. In addition, on May 11, 2004, the Service received a petition from the Center for Biological Diversity to list 225 species we previously had identified as

candidates for listing in accordance with section 4 of the Act, including the Austin blind and Salado salamanders.

The Jollyville Plateau salamander was petitioned to be listed as an endangered species on June 13, 2005, by Save Our Springs Alliance. Action on this petition was precluded by court orders and settlement agreements for other listing actions until 2006. On February 13, 2007, we published a 90-day petition finding (72 FR 6699) in which we concluded that the petition presented substantial information indicating that listing may be warranted. On December 13, 2007, we published the 12-month finding (72 FR 71040) on the Jollyville Plateau salamander, which concluded that listing was warranted, but precluded by higher priority actions. The Jollyville Plateau salamander was subsequently included in all of our annual Candidate Notices of Review (73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011). Throughout the three reviews, the listing priority number has remained at 8, indicating that threats to the species were imminent, but moderate to low in magnitude. On September 30, 2010, the Jollyville Plateau salamander was petitioned to be emergency listed by Save Our Springs Alliance and Center for Biological Diversity. We issued a petition response letter to Save Our Springs Alliance and Center for Biological Diversity on December 1, 2011, which stated that emergency listing a species is not a petitionable action under the Administrative Procedure Act or the Act; therefore, we treat a petition requesting emergency listing solely as a petition to list a species under the Act.

The Georgetown salamander was included in 10 Candidate Notices of Review (66 FR 54808, October 30, 2001; 67 FR 40657, June 13, 2002; 69 FR 24876, May 4, 2004; 70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011). In the 2008 review, the listing priority number was lowered from 2 to 8, indicating that threats to the species were imminent, but moderate to low in magnitude. This reduction in listing priority number was primarily due to the land acquisition and conservation efforts of the Williamson County Conservation Foundation. In addition, the Georgetown salamander was petitioned by the Center for Biological Diversity to be listed as an endangered species on May 11, 2004, but at that time, it was already a

candidate species whose listing was precluded by higher priority actions.

Endangered Status for the Four Central Texas Salamanders

Background

It is our intent to discuss below only those topics directly relevant to the proposed listing of the Austin blind salamander, Jollyville Plateau salamander, Georgetown salamander, and Salado salamander as endangered in this section of the proposed rule.

Species Information

All four central Texas salamanders (Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders) are neotenic (do not transform into a terrestrial form) members of the family Plethodontidae. Plethodontid salamanders comprise the largest family of salamanders within the Order Caudata, and are characterized by an absence of lungs (Petranka 1998, pp. 157–158). As neotenic salamanders, they retain external feathery gills and inhabit aquatic habitats (springs, spring-runs, and wet caves) throughout their lives (Chippindale *et al.* 2000, p. 1). In other words, all four of these salamanders are entirely aquatic and respire through gills. Also, all adult salamanders of these four species are about 2 inches (in) (5 centimeters (cm)) long (Chippindale *et al.* 2000, pp. 32–42; Hillis *et al.* 2001, p. 268).

Each species inhabits water of high quality with a narrow range of conditions (for example, temperature, pH, and alkalinity) maintained by the Edwards Aquifer. All four species depend on this water from the Edwards Aquifer in sufficient quantity and quality to meet their life-history requirements for survival, growth, and reproduction. The Edwards Aquifer is a karst aquifer characterized by open chambers such as caves, fractures, and other cavities that were formed either directly or indirectly by dissolution of subsurface rock formations. Water for the salamanders is provided by infiltration of surface water through the soil or recharge features (caves, faults, fractures, sinkholes, or other open cavities) into the Edwards Aquifer, which discharges from springs as groundwater (Schram 1995, p. 91). The habitat of one species (Austin blind salamander) occurs in the Barton Springs Segment of the Edwards Aquifer, while the habitats of the three other species occur in the Northern Segment of the Edwards Aquifer. The recharge and contributing zones of these segments of the Edwards Aquifer are found in portions of Travis, Williamson,

Blanco, Bell, Burnet, Lampasas, Mills, Hays, Coryell, and Hamilton Counties, Texas (Hill Country Foundation 1995, p. 1). The three salamander species that occur in the Northern Segment of the Edwards Aquifer (Jollyville Plateau, Georgetown, and Salado salamanders) have very similar external morphology. Because of this, they were previously believed to be the same species; however, molecular evidence strongly indicates that there is a high level of divergence between the three groups (Chippindale *et al.* 2000, pp. 15–16).

The four central Texas salamander species spend varying portions of their life within their surface (in or near spring openings and pools as well as spring runs) and subsurface (within caves or other underground areas within the Edwards Aquifer) habitats. They travel an unknown depth into interstitial spaces (empty voids between rocks) within the spring or streambed substrate that provide foraging habitat and protection from predators and drought conditions (Cole 1995, p. 24; Pierce and Wall 2011, pp. 16–17). They may also use deeper passages of the aquifer that connect to the spring opening (Dries 2011, City of Austin (COA), pers. comm.). This behavior makes it difficult to accurately estimate population sizes, as only salamanders on the surface can be regularly monitored. Therefore, the status of subsurface populations is largely unknown, making it difficult to assess the effects of threats on the subsurface populations and their habitat.

The Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders have much in common. All four species are entirely aquatic throughout each portion of their life cycles and highly dependent on water from the Edwards Aquifer in sufficient quantity and quality to meet their life-history requirements for growth, survival, and reproduction. Although detailed dietary studies are lacking for these four salamander species, their diets are presumed to be similar to other *Eurycea* species, consisting of small aquatic invertebrates such as amphipods, copepods, isopods, and insect larvae [reviewed in COA 2001, pp. 5–6]. The four central Texas salamanders also share similar predators, which include centrarchid fish (carnivorous freshwater fish belonging to the sunfish family), crayfish, and large aquatic insects (Pierce and Wall 2011, pp. 18–20; Bowles *et al.* 2006, p. 117; Cole 1995, p. 26). Because eggs are very rarely found on the surface, it is believed that these salamanders deposit their eggs underground for protection (O'Donnell *et al.* 2005, p. 18). The detection of

juveniles in all seasons suggests that reproduction occurs year-round (Bendik 2011a, p. 26; Hillis *et al.* 2001, p. 273).

Dispersal patterns through streams or aquifers for these four salamander species are relatively unknown. However, one study of other closely related *Eurycea* species in the southeastern portion of central Texas found that populations of salamanders are genetically isolated from one another and neither aquifers nor streams serve as dispersal corridors (Lucas *et al.* 2009, pp. 1,315–1,316).

On the other hand, some evidence suggests that the four Texas salamanders may be able to travel some distance through subsurface aquifer conduits. Recent genetic work on the Jollyville Plateau salamander showed evidence of gene flow between sites that are not connected by surface flow (Chippindale 2010, pp. 9, 18–22). This study suggests that central Texas salamanders are regionally isolated, but populations within those regions have some level of dispersal ability through the subsurface habitat. For example, the Austin blind salamander is believed to occur underground throughout the entire Barton Springs complex (Dries 2011, pers. comm.). The spring habitats used by salamanders of the Barton Springs complex are not connected on the surface, so the Austin blind salamander population extends at least 984 feet (ft) (300 meters (m)) underground, as this is the approximate distance between the farthest two outlets within the Barton Springs complex known to be occupied by the species.

Due to the similar life history of the other three *Eurycea* species considered here, it is plausible that populations of these species could also extend this distance through subterranean habitat. Dye-trace studies have demonstrated that some Jollyville Plateau salamander sites located miles apart are connected hydrologically (Hauwert and Warton 1997), but it remains unclear if salamanders are able to travel between those sites. Also, in Salado, a large underground conduit conveys groundwater from the area under the Stagecoach Hotel to Big Boiling Spring (Mahler 2012, U.S. Geological Survey, pers. comm.). Additionally, in Barton Springs, a mark and recapture study failed to document the movement of endangered Barton Springs salamanders (*Eurycea sosorum*) between any of the springs in the Barton Springs complex (Dries 2012, pers. comm.), although this study has only recently begun and is relatively small in scope. In conclusion, there is some evidence that populations could be connected through subterranean habitat, although dispersal

patterns and the actual nature of connectivity are largely unknown.

Because the hydrology of central Texas is very complex and information on the hydrology of specific spring sites is largely unknown, we are seeking information on spring hydrology and salamander dispersal during the public comment period (see “Information Requested” above).

Each species is discussed in more detail below.

Austin Blind Salamander

The Austin blind salamander has a pronounced extension of the snout, no external eyes, and weakly developed tail fins. In general appearance and coloration, the Austin blind salamander is more similar to the Texas blind salamander (*Eurycea rathbuni*) that occurs in the Southern Segment of the Edwards Aquifer than its sympatric (occurring within the same range) species, the Barton Springs salamander. The Austin blind salamander has a reflective, lightly pigmented skin with a pearly white or lavender appearance (Hillis *et al.* 2001, p. 271). Before the Austin blind salamander was formally described, juvenile salamanders were sighted occasionally in Barton Springs, and thought to be a variation of the Barton Springs salamander. It was not until 2001, that enough specimens were available to formally describe these juveniles as a separate species using morphological and genetic characteristics (Hillis *et al.* 2001, p. 267). Given the reduced eye structure of the Austin blind salamander, and the fact that it is rarely seen at the water’s surface (Hillis *et al.* 2001, p. 267), this salamander is thought to be more subterranean than the surface-dwelling Barton Springs salamander.

The Austin blind salamander occurs in Barton Springs in Austin, Texas. These springs are fed by the Barton Springs Segment of the Edwards Aquifer. This segment covers roughly 155 square miles (mi) (401 square kilometers (km)) from southern Travis County to northern Hays County, Texas (Smith and Hunt 2004, p. 7). It has a storage capacity of over 300,000 acre-feet. The contributing zone for the Barton Springs Segment of the Edwards Aquifer that supplies water to the salamander’s spring habitat extends into Travis, Blanco, and Hays Counties, Texas (Ross 2011, p. 3).

The Austin blind salamander is found in three of the four Barton Springs outlets in the City of Austin’s Zilker Park, Travis County, Texas: Main (Parthenia) Springs, Eliza Springs, and Sunken Garden (Old Mill or Zenobia) Springs. The Main Springs provides

water for the Barton Springs Pool, and is operated by the City of Austin as a public swimming pool. These spring sites have been significantly modified for human use. The area around Main Springs was impounded in the late 1920s to create Barton Springs Pool. Flows from Eliza and Sunken Garden Springs are also retained by concrete structures, forming small pools on either side of Barton Springs Pool (COA 1998, p. 6; Service 2005, p. 1.6–25). The Austin blind salamander has not been observed at the fourth Barton Springs outlet, known as Upper Barton Springs (Hillis *et al.* 2001, p. 273). For more information on habitat, see the “Proposed Critical Habitat Designation for the Four Central Texas Salamanders” section of this proposed rule.

From January 1998 to December 2000, there were only 17 documented observations of the Austin blind salamander. During this same time-frame, 1,518 Barton Springs salamander observations were made (Hillis *et al.* 2001, p. 273). The abundance of Austin blind salamanders increased slightly from 2002–2006, but fewer observations have been made in more recent years (2009–2010) (COA 2011a, pp. 51–52). When they are observed, Austin blind salamanders occur in relatively low numbers (COA 2011a, pp. 51–52). Most of the Austin blind salamanders that were observed during these surveys were juveniles (less than 1 in (2.5 cm) in total length) (Hillis *et al.* 2001, p. 273). Although the technology to safely and reliably mark salamanders for individual recognition has recently been developed (O’Donnell *et al.* 2008, p. 3), population estimates for this species have not been undertaken, because surveying within the Edwards Aquifer is not possible at the current time. However, population estimates are possible for aquifer-dwelling species using genetic techniques, and one such study is planned for the Austin blind salamander in the near future (Texas Parks and Wildlife Department (TPWD) 2011a, p. 11).

Jollyville Plateau Salamander

Surface-dwelling populations of Jollyville Plateau salamanders have large, well-developed eyes; wide, yellowish heads; blunt, rounded snouts; dark greenish-brown bodies; and bright yellowish-orange tails (Chippindale *et al.* 2000, pp. 33–34). Some cave forms of Jollyville Plateau salamanders exhibit cave-associated morphologies, such as eye reduction, flattening of the head, and dullness or loss of color (Chippindale *et al.* 2000, p. 37). Genetic analysis suggests a taxonomic split

within this species that appears to correspond to major geologic and topographic features of the region (Chippindale 2010, p. 2). Chippindale (2010, pp. 5, 8) concluded that the Jollyville Plateau salamander exhibits a strong genetic separation between two lineages within the species: A "Plateau" clade that occurs in the Bull Creek, Walnut Creek, Shoal Creek, Brushy Creek, South Brushy Creek, and southeastern Lake Travis drainages; and a "peripheral" clade that occurs in the Buttercup Creek and northern Lake Travis drainages (Chippindale 2010, pp. 5–8). The study also suggests this genetic separation may actually represent two species (Chippindale 2010, pp. 5, 8). However, a formal, peer-reviewed description of the two possible species has not been published. We therefore do not recognize a separation of the Jollyville Plateau salamander into two species because this split has not been recognized by the scientific community.

The Jollyville Plateau salamander occurs in the Jollyville Plateau and Brushy Creek areas of the Edwards Plateau in Travis and Williamson Counties, Texas (Chippindale *et al.* 2000, pp. 35–36; Bowles *et al.* 2006, p. 112; Sweet 1982, p. 433). Upon classification as a species, Jollyville Plateau salamanders were known from Brushy Creek and, within the Jollyville Plateau, from Bull Creek, Cypress Creek, Long Hollow Creek, Shoal Creek, and Walnut Creek drainages (Chippindale *et al.* 2000, p. 36). Since it was described, the Jollyville Plateau salamander has also been documented within the Lake Creek drainage (O'Donnell *et al.* 2006, p. 1). Cave-dwelling Jollyville Plateau salamanders are known from 1 cave in the Cypress Creek drainage and 12 caves in the Buttercup Creek cave system in the Brushy Creek drainage (Chippindale *et al.* 2000, p. 49; Russell 1993, p. 21; Service 1999, p. 6; HNTB 2005, p. 60).

The Jollyville Plateau salamander's spring-fed habitat is typically characterized by a depth of less than 1 foot (ft) (0.3 meters (m)) of cool, well oxygenated water (COA 2001, p. 128; Bowles *et al.* 2006, p. 118) supplied by the underlying Northern Segment of the Edwards Aquifer (Cole 1995, p. 33). The aquifer that feeds this salamander's habitat is generally small, shallow, and localized (Chippindale *et al.* 2000; p. 36, Cole 1995, p. 26). Jollyville Plateau salamanders are typically found near springs or seep outflows and likely require constant temperatures (Sweet 1982, pp. 433–434; Bowles *et al.* 2006, p. 117). Salamander densities are higher in pools and riffles and in areas with rubble, cobble, or boulder substrates

rather than on solid bedrock (COA 2001, p. 128; Bowles *et al.* 2006, pp. 114–116). Surface-dwelling Jollyville Plateau salamanders also occur in subsurface habitat within the underground aquifer (COA 2001, p. 65; Bowles *et al.* 2006, p. 118). For more on habitat, see the "Proposed Critical Habitat Designation for the Four Central Texas Salamanders" of this proposed rule.

Some Jollyville Plateau salamander populations have experienced decreases in abundance in recent years. City of Austin survey data indicate that four of the nine sites that were regularly monitored by City of Austin staff between December 1996 and January 2007 had statistically significant declines in salamander abundance over 10 years (O'Donnell *et al.* 2006, p. 4). The average number of salamanders counted at each of these 4 sites declined from 27 salamanders counted during surveys from 1996 to 1999 to 4 salamanders counted during surveys from 2004 to 2007. In 2007, monthly mark-recapture surveys were conducted in concert with surface counts at three sites in the Bull Creek watershed (Lanier Spring, Lower Rieblin, and Wheless Spring) over a 6-to-8-month period to obtain surface population size estimates and detection probabilities for each site (O'Donnell *et al.* 2008, p. 11). Surface population estimates at Lanier Spring varied from 94 to 249, surface population estimates at the Lower Rieblin site varied from 78 to 126, and surface population estimates at Wheless Spring varied from 187 to 1,024 (O'Donnell *et al.* 2008, pp. 44–45). These numbers remained fairly consistent in more recent population estimates for the three sites (Bendik 2011a, p. 22).

Georgetown Salamander

The Georgetown salamander is characterized by a broad, relatively short head with three pairs of bright-red gills on each side behind the jaws, a rounded and short snout, and large eyes with a gold iris. The upper body is generally grayish with varying patterns of melanophores (cells containing brown or black pigments called melanin) and iridophores (cells filled with iridescent pigments called guanine), while the underside is pale and translucent. The tail tends to be long with poorly developed dorsal and ventral fins that are golden-yellow at the base, cream-colored to translucent toward the outer margin, and mottled with melanophores and iridophores. Unlike the Jollyville Plateau salamander, the Georgetown salamander has a distinct dark border along the lateral margins of the tail fin

(Chippindale *et al.* 2000, p. 38). As with the Jollyville Plateau salamander, the Georgetown salamander has recently discovered cave-adapted forms with reduced eyes and pale coloration (TPWD 2011a, p. 8).

The Georgetown salamander is known from springs along five tributaries (South, Middle, and North Forks; Cowan Creek; and Berry Creek) to the San Gabriel River (Pierce 2011a, p. 2) and from three caves (aquatic, subterranean locations) in Williamson County, Texas. A groundwater divide between the South Fork of the San Gabriel River and Brushy Creek to the south likely creates the division between the ranges of the Jollyville Plateau and Georgetown salamanders (Williamson County 2008, p. 3–34). The Service is currently aware of 16 Georgetown salamander localities. This species has not been observed in recent years at two locations (San Gabriel Spring and Buford Hollow), despite several visual survey efforts to find it (Pierce 2011b,c, Southwestern University, pers. comm.). The current population status is unknown for four sites due to restricted access (Cedar Breaks, Shadow Canyon, Hogg Hollow Spring, and Bat Well). Georgetown salamanders continue to be observed at the remaining 10 sites (Swinbank Spring, Knight Spring, Twin Springs, Hogg Hollow Spring, Cowan Creek Spring, Cedar Hollow, Cobbs Cavern Spring, Cobbs Well, Walnut Spring, and Water Tank Cave) (Pierce 2011c, pers. comm.; Gluesenkamp 2011a, TPWD, pers. comm.). Recent mark-recapture studies suggest a population size of 100 to 200 adult salamanders at Twin Springs, with a similar population estimate at Swinbank Spring (Pierce 2011a, p. 18). Population sizes at other sites are unknown, but visual surface counts result in comparatively low numbers (Williamson County 2008, pp. 3–35). There are numerous other springs in Williamson County that may support Georgetown salamander populations, but private land ownership prevents investigative surveys (Williamson County 2008, pp. 3–35).

Surface-dwelling Georgetown salamanders inhabit spring runs, riffles, and pools with gravel and cobble rock substrates (Pierce *et al.* 2010, pp. 295–296). This species prefers larger cobble and boulders to use as cover (Pierce *et al.* 2010, p. 295). Salamanders are found within 164 ft (50 m) of a spring opening (Pierce *et al.* 2011a, p. 4), but they are most abundant within the first 16.4 ft (5 m) (Pierce *et al.* 2010, p. 294). Individuals do not exhibit much movement throughout the year (Pierce *et al.* 2010, p. 294). The water chemistry

of Georgetown salamander habitat is constant year-round in terms of temperature and dissolved oxygen (Pierce *et al.* 2010, p. 294, Biagas *et al.* in review, p. 8). Little is known about the ecology of Georgetown salamanders that occupy the cave sites (Cobbs Cavern, Bat Well, and Water Tank Cave) where this species is known to occur or the quality and extent of their subterranean habitats. For more on habitat, see the "Proposed Critical Habitat Designation for the Four Central Texas Salamanders" section of this proposed rule.

Salado Salamander

The Salado salamander has reduced eyes compared to other spring-dwelling *Eurycea* species in north-central Texas and lacks well-defined melanophores. It has a relatively long and flat head, and a blunt and rounded snout. The upper body is generally grayish-brown with a slight cinnamon tinge and an irregular pattern of tiny, light flecks. The underside is pale and translucent. The posterior portion of the tail generally has a well-developed dorsal fin, but the ventral tail fin is weakly developed (Chippindale *et al.* 2000, p. 42).

The Salado salamander is known historically from four spring sites near the village of Salado, Bell County, Texas: Big Boiling Springs (also known as Main, Salado, or Siren Springs), Lil' Bubbly Spring, Lazy Days Fish Farm Spring, and Robertson Springs (Chippindale *et al.* 2000, p. 43; TPWD 2011a, pp. 1–2). These springs bubble up through faults in the Northern Segment of the Edwards Aquifer and associated limestone along Salado Creek (Brune 1975, p. 31). The four spring sites all contribute to Salado Creek. Under Brune's (1975, p. 5) definition, which identifies springs depending on flow, all sites are considered small (4.5 to 45 gallons per minute (17 to 170 liters per minute)) to medium springs (45 to 449 gallons per minute (170 to 1,700 liters per minute)). Several other spring sites (Big Bubbly Springs, Critchfield Springs, and Anderson Springs) are located downstream from Big Boiling Springs and Robertson Springs. These springs have been surveyed by TPWD periodically since June 2009, but no salamanders have been found (Gluesenkamp 2010, pers. comm.). In August 2009, TPWD discovered a population of salamanders at a new site (Solana Spring #1) farther upstream on Salado Creek in Bell County, Texas (TPWD 2011a, p. 2). Salado salamanders were recently confirmed at two other spring sites (Cistern and Hog Hollow Springs) farther upstream on the Salado Creek in March 2010 (TPWD 2011a, p.

2). In total, the Salado salamander is known from seven springs. A groundwater divide between Salado Creek and Berry Creek to the south likely creates a division between the ranges of the Georgetown and Salado salamander (Williamson County 2008, p. 3–34).

Of the four salamander species, Salado salamanders are observed the least and are therefore less understood. Biologists were unable to observe this species in its type locality (location from which a specimen was first collected and identified as a species) despite over 20 visits to Big Boiling Springs that occurred between 1991 and 1998 (Chippindale *et al.* 2000, p. 43). Likewise, TPWD surveyed this site weekly from June 2009 until May 2010, and found one salamander (Gluesenkamp 2010, pers. comm.) at a spring outlet locally referred to as "Lil' Bubbly" located just upstream from Big Boiling Springs. One additional unconfirmed sighting of a Salado salamander in Big Boiling Springs was reported in 2008, by a citizen of Salado, Texas. In 2009, TPWD was granted access to Robertson Springs to survey for the Salado salamander. This species was reconfirmed at this location in February 2010 (Gluesenkamp 2010, pers. comm.). Salado salamander populations appear to be larger at spring sites upstream of the Village of Salado, probably due to the higher quality of the habitat (Gluesenkamp 2011c, pers. comm.). For more on habitat, see the "Proposed Critical Habitat Designation for the Four Central Texas Salamanders" section of this proposed rule.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat modification, in the form of degraded water quality and quantity and disturbance of spring sites, is the primary threat to the four central Texas salamander species. Water quality degradation in salamander habitat has been cited as the top concern in several studies (Chippindale *et al.* 2000, pp. 36, 40, 43; Bowles *et al.* 2006, pp. 118–119; O'Donnell *et al.* 2006, pp. 45–50), because these salamanders spend their entire life cycle in water. All of the species have evolved under natural aquifer conditions both underground and as the water discharges from natural spring outlets. Deviations from that high water quality have detrimental effects on salamander ecology, because the aquatic habitat can be rendered unsuitable for salamanders by changes in water chemistry, quantity, and flow patterns. Substrate modification is also a major concern for the salamander species (COA 2001, pp. 101, 126; Geismar 2005, p. 2; O'Donnell *et al.* 2006, p. 34). Unobstructed interstitial space (the space between the rocks) is critical to habitat of all four salamander species, because it provides cover from predators and habitat for macroinvertebrate prey items. When the interstitial spaces become compacted or filled with fine sediment, the amount of available foraging habitat and protective cover for salamanders is reduced (Welsh and Ollivier 1998, p. 1,128).

Threats to the habitat of the four central Texas salamanders may target only the surface habitat, only the subsurface habitat, or both habitat types. For example, substrate modification degrades the surface springs and spring-runs but does not impact the subsurface environment, while water quality degradation impacts both the surface and subsurface habitats. Because of their ability to retreat to the subsurface habitat, the four central Texas salamander species may be able to persist through surface habitat degradation. For example, drought conditions are common to the region, and these salamanders' ability to retreat underground may be an evolutionary adaptation to such natural conditions (Bendik 2011a, pp. 31–32). However, we do not fully understand the relative importance of the surface and subsurface habitats to salamander populations. The best available scientific evidence suggests that surface habitats are important for prey availability and individual growth. Prey availability for carnivores is low underground due to the lack of sunlight

and primary production (Hobbs and Culver 2009, p. 392). In addition, length measurements taken during a City of Austin mark-recapture study at Lanier Spring demonstrated that Jollyville Plateau salamanders had negative growth during a 10-month period of retreating to the subsurface from 2008 to 2009 (Bendik 2011b, COA, pers. comm.). Therefore, threats to surface habitat at a given site may not extirpate any populations of these salamander species, but this type of habitat degradation may severely limit population growth and increase the species' overall risk of extinction from other threats.

The majority of the discussion below under Factor A focuses on evaluating the nature and extent of stressors related to urbanization within the watershed, the primary source of water quality degradation. Additionally, other sources of habitat destruction and modification will be addressed. These include physical habitat modification from human activities and feral hogs, and environmental events, such as flooding and drought.

Urbanization Within the Watershed

The ranges of the four salamander species reside within increasingly urbanized areas of Travis, Williamson, and Bell Counties that are experiencing rapid human population growth. For example, the population of the City of Austin grew from 251,808 people in 1970, to 656,562 people in 2000. By 2007, the population had grown to 735,088 people (COA 2007a, p. 1). This represents a 192 percent increase over the 37-year period. The human population within the City of Georgetown, Texas, was 28,339 in 2000, and increased to 47,380 by January 2008 (City of Georgetown 2008, pp. 3.3–3.5). The human population is expected to exceed 225,000 by 2033 (City of Georgetown 2008, p. 3.5), which would be a 375 percent increase over a 33-year period. Population projections from the Texas State Data Center (2008, p. 1) estimate that Travis County will increase in population from 812,280 in 2000, to 1,498,569 in 2040. This would be an 84 percent increase in the human population size over this 40-year period. The Texas State Data Center also estimates an increase in human population in Williamson County from 249,967 in 2000, to 1,742,619 in 2040. This would represent a 597 percent increase over a 40-year timeframe. The human population is not increasing as rapidly in the range of the Salado salamander, but growth is occurring. Population projections from the Texas State Data Center (2009, p. 19) estimate

that Bell County will increase in population from 237,974 in 2000, to 397,741 in 2040, a 67 percent increase over the 40-year period. By comparison, the national United States' population is expected to increase from 310,233,000 in 2010, to 405,655,000 in 2040, which is about a 24 percent increase over the 30-year period (U.S. Census Bureau 2012, p. 1). Growing human populations increase demand for residential and commercial development, drinking water supply, wastewater disposal, flood control, and other municipal goods and services that alter the environment, often degrading salamander habitat by changing hydrologic regimes, and affecting the quantity and quality of water resources.

As development increases within the watersheds, more opportunities exist for the detrimental effects of urbanization to impact salamander habitat. Urban development upstream of salamander habitat leads to various stressors on spring systems, including increased flow velocities, increased sedimentation, increased contamination, changes in stream morphology and water chemistry, and decreases in groundwater recharge.

Several researchers have examined the negative impact of urbanization on stream salamander habitat by making connections between salamander abundances and levels of development within the watershed. In 1972, Orser and Shure (p. 1,150) were among the first biologists to show a decrease in stream salamander density with increasing urban development. A similar relationship between salamanders and urbanization was found in North Carolina (Price *et al.* 2006, pp. 437–439; Price *et al.* 2012, p. 198), Maryland, and Virginia (Grant *et al.* 2009, pp. 1,372–1,375). In central Texas, Bowles *et al.* (2006, p. 117) found lower Jollyville Plateau salamander densities in tributaries with developed watersheds as compared to tributaries with undeveloped watersheds. Developed tributaries also had higher concentrations of chloride, magnesium, nitrate-nitrogen, potassium, sodium, and sulfate (Bowles *et al.* 2006, p. 117). Several biologists have concluded that urbanization is one of the largest threats to the future survival of central Texas salamanders (Bowles *et al.* 2006, p. 119; Chippindale and Price 2005, pp. 196–197).

Willson and Dorcas (2003, pp. 768–770) demonstrated that to assess the impact of urbanization on aquatic salamanders, it is important to examine development within the entire watershed as opposed to areas just adjacent to the stream. For example,

urban development within the drainage areas of Austin blind and Jollyville Plateau salamander spring sites has included residential and commercial structures, golf courses, and the associated roads and utility pipelines (Cole 1995, p. 28; COA 2001, pp. 10–12).

Because detrimental effects due to urbanization are occurring to the salamanders' habitats now, and we expect those effects to increase in the future, we consider urbanization to be a threat to each of the species. We discuss below how each source of the stressors of urbanization causes threats to the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders' habitats. These sources of impacts from urbanization include impervious cover and stormwater runoff, land application contaminants, hazardous material spills, construction activities, and water quantity reduction.

Impervious Cover and Stormwater Runoff

Impervious cover is any surface material, such as roads, rooftops, sidewalks, patios, paved surfaces, or compacted soil, that prevents water from filtering into the soil (Arnold and Gibbons 1996, p. 244). Once natural vegetation in a watershed is replaced with impervious cover, rainfall is converted to surface runoff instead of filtering through the ground (Schueler 1991, p. 114).

As urbanization increases due to human population growth within the watersheds of salamander habitat, levels of impervious cover will rise. Various levels of impervious cover within watersheds have been cited as having detrimental effects to water quality within streams. The threshold of measurable degradation of stream habitat and loss of biotic integrity consistently occurs with 6 to 15 percent impervious cover in contributing watersheds (Bowles *et al.* 2006, p. 111; Miller *et al.* 2007, p. 74). A review of relevant literature by Schueler (1994, pp. 100–102) indicates that stream degradation occurs at impervious cover of 10 to 20 percent, a sharp drop in habitat quality is found at 10 to 15 percent impervious cover, and watersheds above 15 percent are consistently classified as poor, relative to biological condition. Schueler (1994, p. 102) also concluded that even when water quality protection practices are widely applied, an impervious cover level of 35 to 60 percent exceeds a threshold beyond which water quality conditions that existed before development occurred cannot be maintained.

Increases in impervious cover resulting from urbanization cause measurable water quality degradation (Klein 1979, p. 959; Bannerman *et al.* 1993, pp. 251–254, 256–258; Center for Watershed Protection 2003, p. 91). Stressors from impervious cover have demonstrable impacts on biological communities within streams. Schueler (1994, p. 104) found that sites receiving runoff from high impervious cover drainage areas had sensitive aquatic macroinvertebrate species replaced by species more tolerant of pollution and hydrologic stress (high rate of changes in discharges over short periods of time). In an analysis of 43 North Carolina streams, Miller *et al.* (2007, pp. 78–79) found a strong negative relationship between impervious cover and the abundance of larval southern two-lined salamanders (*Eurycea cirrigera*). Impervious cover degrades salamander habitat in three ways: (1) Introducing and concentrating contaminants in stormwater runoff, (2) increasing sedimentation, and (3) altering the natural flow regime of streams.

Impervious Cover Analysis

To calculate impervious cover within the watersheds occupied by the four central Texas salamander species, we

used the Watershed Boundary Dataset (USGS 2012, p. 1) to delineate the watersheds where these species are known to occur along with the 2006 National Land Cover Dataset (MRLC 2012, p. 1). The Watershed Boundary Dataset is a nationally consistent watershed dataset developed by the U.S. Geological Survey (USGS) that is subdivided into 12-digit hydrologic unit codes, which are the smallest (or finest scale) of the hydrologic units available. Each of the 12-digit hydrologic unit codes represents part or all of a surface drainage basin or a combination of drainage basins, also referred to in the Watershed Boundary Dataset as “watersheds.” The 2006 National Land Cover Dataset (the most recent of the national land cover datasets) was developed by the Multi-Resolution Land Characteristics Consortium to provide 30-meter spatial resolution estimates for tree cover and impervious cover percentages within the contiguous United States.

We identified 15 of the watersheds delineated within the Watershed Boundary Dataset as being occupied by one of the four central Texas salamander species. The Jollyville Plateau salamander occurs within six watersheds (Bull Creek, Cypress Creek, Lake Creek, South Brushy Creek, Town

Lake, and Walnut Creek). The Austin blind salamander occurs within one watershed (Lake Austin). The Georgetown salamander occurs within six watersheds (Dry Berry Creek, Lake Georgetown, Lower Berry Creek, Lower South Fork San Gabriel River, Middle Fork San Gabriel River, and Smith Branch San Gabriel River). The Salado salamander occurs within two watersheds (Buttermilk Creek and Mustang Creek).

An impervious cover value (0 to 100 percent) is assigned for each 30-meter pixel within the 2006 National Land Cover Dataset. Using these values, we calculated the overall average value (percentage) for each watershed identified. We also identified three categories of impervious cover for each pixel: (1) 0 percent impervious cover (no impervious cover was identified within the 30-meter pixel), (2) 1 to 15 percent impervious cover (between 1 and 15 percent of the 30-meter pixel was identified as impervious cover), and (3) greater than 15 percent impervious cover (more than 15 percent of the 30-meter pixel was identified as impervious cover). For each watershed, we then calculated the percentage of pixels that fell into each of these three categories. These percentages are presented in Table 1.

TABLE 1—IMPERVIOUS COVER ESTIMATES

Salamander species (total number of known sites)	Watershed	Number of salamander sites	Categories of impervious cover (IC) percentage			Average impervious cover (IC) percentage
			0% IC	1–15% IC	>15% IC	
Jollyville Plateau salamander (92)	Bull Creek	64	61	14	25	12.00
	Cypress Creek	11	79	9	12	5.72
	Lake Creek	3	43	17	40	21.35
	South Brushy Creek	9	58	17	24	12.52
	Town Lake	4	11	30	59	34.32
	Walnut Creek	1	34	17	50	28.03
Austin blind salamander (3)	Lake Austin	3	54	24	24	11.58
Georgetown salamander (16)	Dry Berry Creek	2	92	7	1	0.59
	Lake Georgetown	6	88	11	2	0.76
	Lower Berry Creek	2	73	10	17	3.03
	Lower South Fork San Gabriel River	1	84	11	6	2.77
	Middle Fork San Gabriel River	4	77	11	12	2.41
	Smith Branch San Gabriel River	1	61	20	19	9.60
Salado salamander (7)	Buttermilk Creek	3	95	5	1	0.31
	Mustang Creek	4	92	7	2	0.91

We also identified areas within each watershed that we knew to be managed as open space. Open space includes lands set aside for either low-use recreation or wildlife preserves. The protection of open space helps preserve the quality of water, which is an important component of salamander surface habitat. Thus, we considered the amount and location of managed open space, and the potential water quality

benefits they provide to salamander surface habitat during our analysis of threats caused by impervious cover within each watershed.

The six watersheds within the Jollyville Plateau salamander’s range have overall average impervious cover estimates ranging from approximately 6 percent (Cypress Creek) to 34 percent (Town Lake). The majority (64) of the 92 known Jollyville Plateau salamander

sites are located within the Bull Creek watershed, which has an overall average impervious cover estimate of 12 percent. When average impervious cover is between 10 and 15 percent within a watershed, sharp declines in aquatic habitat quality are likely to occur (Schueler 1994, pp. 100–102).

However, a substantial portion of the land area categorized as open space and protected as part of the Balcones

Canyonlands Preserve is located within the Bull Creek watershed. The Balcones Canyonlands Preserve is managed under the terms and conditions of a regional habitat conservation plan (HCP) (the Balcones Canyonlands Conservation Plan HCP) jointly held by the City of Austin and Travis County as mitigation lands issued under the authority of an Endangered Species Act section 10(a)(1)(B) permit for the protection of endangered birds and karst invertebrates. A number of cooperating partners own and manage lands dedicated to the Balcones Canyonlands Preserve, including several private landowners, the Lower Colorado River Authority, the Nature Conservancy of Texas, and the Travis Audubon Society. Although the permit that created the Balcones Canyonlands Preserve did not include the Jollyville Plateau salamander, the Balcones Canyonlands Preserve land management strategies help maintain water quality within salamander habitats on lands within the preserve. Nonetheless, the City of Austin has reported significant declines in Jollyville Plateau salamander abundance at one of their Jollyville Plateau salamander monitoring sites within Bull Creek (O'Donnell *et al.* 2006, p. 45), even though our analysis found that 61 percent of the land within this watershed has 0 percent impervious cover. The location of this monitoring site is within a large preserved tract. However, the headwaters of this drainage are outside the preserve, and the development in this area increased sedimentation downstream and impacted salamander habitat in the preserved tract.

The Cypress Creek watershed is the least developed of all of the watersheds within the Jollyville Plateau salamander's range, and much of it is extensively covered by lands that are managed as open space. The vast majority of this open space is part of the Balcones Canyonlands Preserve. There are 11 spring sites known to be occupied by the Jollyville Plateau salamander within this watershed. Seven of these sites are located directly within or downstream from areas dominated by impervious surfaces. The 2006 National Land Cover Dataset data indicated that 12 percent of the 30-m pixels in the Cypress Creek watershed have impervious cover of 15 percent or more and 9 percent of the 30-m pixels have impervious cover between 1 and 15 percent.

The other watersheds within the Jollyville Plateau salamander's range have impervious cover levels that may lead to water quality declines within salamander surface habitat (Schueler

1994, pp. 100–102). Nine sites known to be occupied by Jollyville Plateau salamanders are located within the South Brushy Creek watershed, which has an overall average impervious cover estimate of 13 percent and very little managed open space. Again, when average impervious cover is between 10 and 15 percent, sharp declines in aquatic habitat quality are likely to occur (Schueler 1994, pp. 100–102).

The Lake Creek watershed with three known salamander locations and the Walnut Creek watershed with one known salamander location are estimated to have 21 percent and 28 percent impervious cover, respectively. The Lake Creek watershed has two tracts (143 ac (58 ha) and 95 ac (38 ha)) of managed open space along with two smaller preserve areas and several municipal parks. Given their small size in relation to the size of the watershed, it is unknown if these areas provide any water quality benefits for salamander surface habitat. The single Jollyville Plateau salamander location within the Walnut Creek watershed is located on a 53-ac (21-ha) park that is situated directly adjacent to a residential development. There are two small (14 ac (6 ha) and 67 ac (27 ha)) municipal parks located upstream from this site. However, the 2006 National Land Cover Dataset data indicated that 50 percent of the 30-m pixels in the Walnut Creek watershed have impervious cover of 15 percent or more and 17 percent of the 30-m pixels have impervious cover between 1 and 15 percent. Because this watershed is extensively covered by impervious surfaces, it is unlikely that these managed open spaces provide adequate water quality for the Jollyville Plateau salamander. Salamander counts at the Walnut Creek location have been low. Although surveys are conducted four times a year, no salamanders were observed from 2006 to 2009, and only six individuals were observed in 2010 (Bendik 2011a, p. 13).

The Town Lake watershed is the most developed of all of the watersheds within the Jollyville Plateau salamander's range. Four Jollyville Plateau salamander sites are located within the Town Lake watershed, which has an estimated 30 percent of its 30-m pixels within the 1 to 15 percent impervious cover category and 59 percent of its 30-m pixels within the greater than 15 percent impervious cover category. We could not identify any parcels of land that are managed as open space within the Town Lake watershed.

The Austin blind salamander occurs within only one of the watersheds (Lake Austin) delineated within the

Watershed Boundary Dataset. The Lake Austin watershed was estimated to have an overall average impervious cover estimate of 12 percent. Although each of the three spring sites where this species is known to occur are located within a park managed by the City of Austin, the water quality within the salamander's habitat can be influenced by development throughout the watershed. The impervious cover within the Lake Austin watershed, which is an indicator of development intensity within the area, is within the range that can lead to water quality declines in aquatic habitats (Schueler 1994, pp. 100–102). Some Balcones Canyonlands Preserve lands are located within the Lake Austin watershed, which likely contribute some water quality benefits to surface flow. However, the Austin blind salamander is, in large part, a subterranean species. Therefore, water quality within this species' habitat can be influenced by land use throughout the recharge zone of the Barton Springs Segment of the Edwards Aquifer.

The Lower Colorado River Authority (LCRA 2002, pp. 3–54–3–55) conducted a water supply study of the recharge and contributing zone areas within the Barton Springs Segment of the Edwards Aquifer that examined the amount of impervious cover within the local area. The eight watersheds within the area had a range of impervious cover from 3 percent to 29 percent in 2000. The projected impervious cover limits for the same eight watersheds in 2025 ranged from 5 percent to 32 percent (LCRA 2002, pp. 4–12–4–13). The two watersheds, Williamson Creek and Sunset Valley Creek (a tributary to Williamson Creek), with the highest percentage of impervious cover (16 and 29 percent, respectively) are also the second and third closest to Barton Springs (LCRA 2002, pp. 4–12–4–13).

The six watersheds within the Georgetown salamander's range have overall average impervious cover estimates ranging from 0.59 percent (Dry Berry Creek) to about 10 percent (Smith Branch San Gabriel River). The overall average impervious cover estimates for each of the six watersheds are below the levels that have been shown to lead to sharp water quality declines in aquatic habitats (Schueler 1994, pp. 100–102). Two (Cobbs Spring and Cobbs Spring Well) of the 16 sites known to be occupied by the Georgetown salamander occur in the headwaters of the Dry Berry Creek watershed, which has an overall average impervious cover estimate of 0.59 percent.

Six spring sites known to be occupied by Georgetown salamander are located within the Lake Georgetown watershed.

This watershed also has one of the least overall average impervious cover estimates (0.76 percent) of the six watersheds within the Georgetown salamander's range. These six sites, along with three of the four spring sites known to be occupied by the Georgetown salamander in the Middle Fork San Gabriel River watershed (with an overall average impervious cover estimate of about 2 percent) and the only known Georgetown salamander site within the Lower South Fork San Gabriel River watershed (with an overall average impervious cover estimate of about 3 percent), are located upstream from the urbanized areas associated with the City of Georgetown. Therefore, these sites are likely not as affected by water quality degradation currently as those spring sites occupied by the Georgetown salamander within the highly urbanized areas of the City of Georgetown.

We identified two tracts of land managed specifically as open space within the Georgetown salamander's range. Williamson County manages a 64-ac (26-ha) conservation easement at Cobbs Cavern and owns the 145-ac (59-ha) Twin Springs Preserve. The Twin Springs preserve contains one Georgetown salamander site. While the Cobbs Cavern conservation easement does not include the Cobbs Spring or Cobbs well site, it does contain land in the watershed for these sites. Despite the protection of these two tracts, water quality at these sites can be influenced by activities occurring throughout the recharge zone. Without more managed open space within this species' range, it is unlikely that water quality within the Georgetown salamander's surface habitat will be protected as development continues in these watersheds into the future.

Four of the 16 sites known to be occupied by the Georgetown salamander are located in areas identified as having impervious cover estimates (either in the 1 to 15 percent impervious cover category or the greater than 15 percent impervious cover category) within the range that can lead to water quality declines (10 to 15 percent) or poor water quality relative to biological condition (greater than 15 percent) in aquatic habitats (Schueler 1994, pp. 100–102). These include one site in the Middle Fork San Gabriel River watershed, the only occupied site within the Smith Branch San Gabriel River watershed (with an overall average impervious cover estimate of about 10 percent), and the two occupied sites within the Lower Berry Creek watershed (with an overall average impervious cover estimate of about 3 percent). Although the overall

average impervious cover estimate within Lower Berry Creek watershed is below the level that has been shown to lead to water quality declines in aquatic habitats (Schueler 1994, pp. 100–102), 17 percent of the watershed has greater than 15 percent impervious cover. These two Georgetown salamander sites are located in the most developed area of this watershed. As such, these sites are vulnerable to water quality degradation caused by pollutants associated with highly urbanized areas.

The Salado salamander occurs within two of the watersheds delineated within the Watershed Boundary Dataset. Buttermilk Creek and Mustang Creek watersheds have overall average impervious cover estimates of 0.31 percent and 0.91 percent, respectively. Although these impervious cover levels are well below that which are likely to lead to water quality declines in aquatic habitats (Schueler 1994, pp. 100–102), three of the seven springs sites known to be occupied by the Salado salamander are directly within urbanized habitats in the Mustang Creek watershed (within the Village of Salado), and therefore, may be more susceptible to spills of hazardous materials and pollutants from roads that are close to locations where salamanders are known to occur.

Four spring sites known to be occupied by Salado salamanders are upstream from the urbanized areas associated with the Village of Salado. Three of these spring sites are located within the Buttermilk Creek watershed on an approximately 8,126-ac (3,288-ha) ranch that is privately owned and almost entirely undeveloped. Another spring site known to be occupied by the Salado salamander within the Mustang Creek watershed is located on another privately owned and almost entirely undeveloped ranch that is approximately 827 ac (335 ha) in size. Both ranches are located upstream of the impervious cover areas associated with the Village of Salado and entirely within the recharge zone of the Northern Segment of the Edwards Aquifer. Although impervious cover is not currently a threat to these upstream sites, a significant portion of the recharge zone extends to areas off of these properties and spring water quality can be impacted by activities occurring some distance away.

We could not identify any large tracts of lands managed specifically as open space within the Salado salamander's range, particularly upstream of sites where this species is known to occur. In addition, there are no agreements in place to preserve or manage the above-mentioned properties for the benefit of

the Salado salamander or its surface habitat. Without these, it is unlikely that water quality within the Salado salamander's surface habitat will be protected if development occurs in these watersheds in the future.

Although the data for this level of the impervious cover analysis were derived using the finest scale hydrologic units readily available in the Watershed Boundary Dataset, they offer no reference to the location of salamander-occupied spring sites in relation to the location of impervious cover within the watersheds. Therefore, impervious cover occurring within each watershed may not necessarily be an indicator of how much impervious cover is impacting water quality within known salamander sites because this analysis does not take into account whether the salamander sites are found upstream or downstream of impervious surfaces associated with developed areas. Moreover, because the most recent impervious cover estimates available within the National Land Cover Dataset were provided from 2006 data, more impervious cover could be present within the watersheds than are indicated in our analysis. By mapping the spring sites where salamanders are known to occur over the 2006 National Land Cover Dataset impervious cover data layer, we can generally discuss which sites may currently be affected by water quality degradation due to their location within the three impervious cover categories mentioned above and identified in Table 1.

To provide a general indication of how much impervious cover may be influencing surface water quality at individual salamander sites, we used 2010 aerial photos to visually estimate the amount of impervious cover upstream of each site known to be occupied by the Jollyville Plateau, Georgetown, or Salado salamander. By visually examining the aerial photos from 2010, we classified the areas within each tributary watershed upstream from each known salamander site into one of four categories (that represent approximations of impervious cover levels). We defined these categories as follows: (1) None (a tributary watershed with no visible impervious cover), (2) low (a tributary watershed with what appeared to be less than 10 percent impervious cover), (3) moderate (a tributary watershed with what appeared to be impervious cover between 10 and 30 percent), and (4) high (a tributary watershed with what appeared to be greater than 30 percent impervious cover). A summary of the number of salamander sites for each of these three species found to be within

the impervious cover categories is provided below (Table 2).

TABLE 2—IMPERVIOUS COVER ESTIMATES UPSTREAM OF KNOWN SALAMANDER LOCATIONS

Salamander species	Number of salamander sites	Number of sites with impervious cover levels			
		None	Low	Moderate	High
Jollyville Plateau salamander	92	17	6	21	48
Georgetown salamander	16	4	9	2	1
Salado Salamander	7	2	4	0	1

The Austin blind salamander was not considered in the analysis of impervious cover upstream of its known sites, as it primarily occurs below the surface and is more likely to be impacted by water quality changes due to impervious cover throughout the Edward Aquifer's recharge zone. Using the 2006 National Land Cover Database, we determined that the recharge zone of the Barton Springs Segment of the Edwards Aquifer had an overall average impervious cover level of 5.87 percent. However, at least 12 percent of the recharge zone has greater than 15 percent impervious cover.

Contaminants in Stormwater Runoff

Urban environments are host to a variety of human activities that generate many types of point source ("end of pipe") and non-point source (coming from many diffuse sources) contaminants. These sources of contaminants, when combined, often degrade nearby waterways and aquatic resources within the watershed. Urban contaminants commonly detected in stormwater include elevated levels of suspended solids, nutrients, trace metals, pesticides, and coliform bacteria. Similarly, various industrial and municipal activities result in the discharge of treated wastewater or unintentional release of industrial contaminants as point source pollution.

Stormwater runoff carries these contaminants into stream systems (Bannerman *et al.* 1993, pp. 251–254, 256–258; Schueler 1994, p. 102; Barrett and Charbeneau 1996, p. 87; Center for Watershed Protection 2003, p. 91). Amphibians, especially their eggs and larvae (which are usually restricted to a small area within an aquatic environment), are sensitive to many different aquatic pollutants (Harfenist *et al.* 1989, pp. 4–57). Contaminants found in aquatic environments, even at sublethal concentrations, may interfere with a salamander's ability to develop, grow, or reproduce (Burton and Ingersoll 1994, pp. 120, 125). Central Texas spring salamanders are particularly vulnerable to contaminants,

because they have evolved under very stable environmental conditions, remain aquatic throughout their entire life cycle, have highly permeable skin, have severely restricted ranges, and cannot escape contaminants in their environment (Turner and O'Donnell 2004, p. 5). In addition, macroinvertebrates, such as small freshwater crustaceans, that aquatic salamanders feed on are especially sensitive to water pollution (Phipps *et al.* 1995, p. 282; Miller *et al.* 2007, p. 74). Studies in the Bull Creek watershed in Austin, Texas, found a loss of some sensitive macroinvertebrate species, potentially due to contaminants of nutrient enrichment and sediment accumulation (COA 2001, p. 15; COA 2010a, p. 16).

Both nationally and locally, consistent relationships between impervious cover and water quality degradation through contaminant loading have been documented. In a study of contaminant loads from various land use areas in Austin, stormwater runoff loads were found to increase with increasing impervious cover (COA 1990, pp. 12–14). This study also found that contaminant loading rates of the more urbanized watersheds were higher than those of the small suburban watersheds. Soeur *et al.* (1995, p. 565) determined that stormwater contaminant loading positively correlated with development intensity in Austin. In a study of 38 small watersheds in the Austin area, 7 different contaminants were found to be positively correlated with impervious cover (COA 2006, p. 35). Using stream data from 1958 to 2007 at 24 Austin-area sites, Glick *et al.* (2009, p. 9) found that the City of Austin's water quality index had a strong negative correlation with impervious cover.

Polycyclic aromatic hydrocarbons (PAHs) are a common form of aquatic contaminants in urbanized areas that could potentially affect salamanders, their habitat, or their prey. This form of pollution can originate from petroleum products, such as oil or grease, or from atmospheric deposition as a byproduct of combustion (for example, vehicular

combustion). These pollutants accumulate over time on impervious cover, contaminating water supplies through urban and highway runoff (Van Metre *et al.* 2000, p. 4,067; Albers 2003, pp. 345–346). The main source of PAH loading in Austin-area streams is parking lots with coal tar emulsion sealant, even though this type of lot only covers 1 to 2 percent of the watersheds (Mahler *et al.* 2005, p. 5565). A recent analysis of the rate of wear on coal tar lots revealed that the sealcoat wears off relatively quickly and contributes more to PAH loading than previously thought (Scoggins *et al.* 2009, p. 4914).

Petroleum and petroleum byproducts can adversely affect living organisms by causing direct toxic action, altering water chemistry, reducing light, and decreasing food availability (Albers 2003, p. 349). Exposure to PAHs at levels found within the Jollyville Plateau salamander's range can cause impaired reproduction, reduced growth and development, and tumors or cancer in species of amphibians, reptiles, and other organisms (Albers 2003, p. 354). Coal tar pavement sealant slowed hatching, growth, and development of a frog (*Xenopus laevis*) in a laboratory setting (Bryer *et al.* 2006, pp. 244–245). High concentrations of PAHs from coal tar sealant negatively affected the righting ability (amount of time needed to flip over after being placed on back) of adult eastern newts (*Notophthalmus viridescens*) and may have also damaged the newt's liver (Sparling *et al.* 2009, pp. 18–20). For juvenile spotted salamanders (*Ambystoma maculatum*), PAHs reduced growth in the lab (Sparling *et al.* 2009, p. 28). In a lab study using the same coal tar sealant once used by the City of Austin, Bommarito *et al.* (2010, pp. 1151–1152) found that spotted salamanders displayed slower growth rates and diminished swimming ability when exposed to PAHs. PAHs are also known to cause death, reduced survival, altered physiological function, inhibited reproduction, and changes in

community composition of freshwater invertebrates (Albers 2003, p. 352).

Limited sampling by the City of Austin has detected PAHs at concentrations of concern at multiple sites within the range of the Jollyville Plateau salamander. Most notable were the elevated levels of nine different PAH compounds at the Spicewood Springs site in the Shoal Creek drainage area (O'Donnell *et al.* 2005, pp. 16–17). This is also one of the sites where salamanders have shown a significant decline in abundance during the City of Austin's long-term monitoring studies (O'Donnell *et al.* 2006, p. 47). Another study found several PAH compounds in seven Austin-area streams, including Barton, Bull, and Walnut Creeks, downstream of coal tar sealant parking lots (Scoggins *et al.* 2007, p. 697). Sites with high concentrations of PAHs (located in Barton and Walnut Creeks) had fewer macroinvertebrate species and lower macroinvertebrate density (Scoggins *et al.* 2007, p. 700). This form of contamination has also been detected at Barton Springs, which is the Austin blind salamander's habitat (COA 1997, p. 10). Because PAHs can adversely affect salamanders, PAHs have been found in the range of the species, and we expect an increase of this contaminant in the future in conjunction with the increase of urbanization, we consider contamination from PAHs to be a threat to the continued existence of all four central Texas salamanders now and in the future.

Conductivity is a measure of the ability of water to carry an electrical current and can be used to approximate the concentration of dissolved inorganic solids in water that can alter the internal water balance in aquatic organisms, affecting the four central Texas salamanders' survival. As ion concentrations such as chlorides, sodium, sulfates, and nitrates rise, conductivity will increase. These compounds are the chemical products, or byproducts, of many common pollutants that originate from urban environments (Menzer and Nelson 1980, p. 633), which are often transported to streams via stormwater runoff from impervious cover. Measurements by the City of Austin between 1997 and 2006 found that conductivity averaged between 550 and 650 microsiemens per centimeter ($\mu\text{S cm}^{-1}$) at rural springs with low or no development and averaged between 900 and 1000 $\mu\text{S cm}^{-1}$ at monitoring sites in watersheds with urban development (O'Donnell *et al.* 2006, p. 37). The City of Austin also found increasing ions with increasing impervious cover at four Jollyville

Plateau salamander sites (Herrington *et al.* 2007, p. 13). These results indicate that developed watersheds contribute to higher levels of water contaminants in salamander habitats.

High conductivity has been associated with declining salamander abundance. For example, three of the four sites with statistically significant declining Jollyville Plateau salamander abundance from 1997 to 2006 are cited as having high conductivity readings (O'Donnell *et al.* 2006, p. 37). Similar correlations were shown in studies comparing developed and undeveloped sites from 1996 to 1998 (Bowles *et al.* 2006, pp. 117–118). This analysis found significantly lower numbers of salamanders and significantly higher measures of specific conductance at developed sites as compared to undeveloped sites (Bowles *et al.* 2006, pp. 117–118). Tributary 5 of Bull Creek has had an increase in conductivity, chloride, and sodium and a decrease in invertebrate diversity from 1996 to 2008 (COA 2010a, p. 16). Only one Jollyville Plateau salamander has been observed here from 2009 to 2010 in quarterly surveys (Bendik 2011a, p. 16). Poor water quality, as measured by high specific conductance and elevated levels of ion concentrations, is cited as one of the likely factors leading to statistically significant declines in salamander abundance at the City of Austin's long-term monitoring sites (O'Donnell *et al.* 2006, p. 46).

In an analysis performed by the City of Austin (Turner 2005a, p. 6), significant changes over time were reported for several chemical constituents and physical parameters in Barton Springs Pool, which could be attributed to impacts from watershed urbanization. Conductivity, turbidity, sulfates, and total organic carbon have increased while the concentration of dissolved oxygen has decreased (Turner 2005a, pp. 8–17). The significance and presence of trends in other pollutants were variable depending on flow conditions (baseflow vs. stormflow, recharge vs. non-recharge) (Turner 2005a, p. 20). A similar analysis by Herrington and Hiers (2010, p. 2) examined water quality at Barton Springs Pool and other Barton Springs outlets where Austin blind salamanders are found (Sunken Gardens and Eliza Springs) over a general period of the mid-1990s to the summer of 2009. Herrington and Hiers (2010, pp. 41–42) found that dissolved oxygen decreased over time in the Barton Springs Pool, while conductivity and nitrogen increased. However, this decline in water quality was not seen in Sunken Gardens Spring or Eliza Spring

(Herrington 2010, p. 42). A separate analysis found that ions such as chloride and sulfate increased in Barton Creek despite the enactment of city-wide water quality control ordinances (Turner 2007, p. 7). Overall, these studies indicate a long-term trend of water quality degradation at Barton Springs over a 34-year period (1975 to 2009).

In summary, there are many different types of contaminants found in stormwater runoff that can have detrimental effects on the four central Texas salamanders. Impervious cover increases the transport of contaminants common in urban environments, and we expect this detrimental effect to increase in the future with increased urbanization. Therefore, the current existence and future increase of contaminants in stormwater runoff is a significant threat to all four central Texas salamanders' surface and subsurface habitats throughout their ranges. However, due to the relatively low levels of impervious cover in its range, the Salado salamander is currently, and anticipated to be, less affected.

Sedimentation from Stormwater Runoff

Elevated mobilization of sediment (mixture of silt, sand, clay, and organic debris) occurs as a result of increased velocity of water running off impervious surfaces (Schram 1995, p. 88; Arnold and Gibbons 1996, pp. 244–245). Increased rates of stormwater runoff cause increased erosion through scouring in headwater areas and sediment deposition in downstream channels (Booth 1991, pp. 93, 102–105; Schram 1995, p. 88). Waterways are adversely affected in urban areas, where impervious cover rates are high, by sediment loads that are washed into streams or aquifers during storm events. Sediments are either deposited into layers or become suspended in the water column (Ford and Williams 1989, p. 537; Mahler and Lynch 1999, p. 177). Sediment derived from soil erosion has been cited as the greatest single source of pollution of surface waters by volume (Menzer and Nelson 1980, p. 632).

Excessive sediment from stormwater runoff is a threat to salamanders because it can cover habitat, cover substrates, and lead to declines in vegetative abundance and diversity (Geismar 2005, p. 2). Sediments suspended in water can clog gill structures, which impairs breathing of aquatic organisms, and can reduce their ability to avoid predators or locate food sources due to decreased visibility (Schueler 1987, p. 1.5). Excessive deposition of sediment in streams can physically reduce the

amount of available habitat and protective cover for aquatic organisms, by filling the interstitial spaces of gravel and rocks. As an example, a California study found that densities of two salamander species were significantly lower in streams that experienced a large infusion of sediment from road construction after a storm event (Welsh and Ollivier 1998, pp. 1,118–1,132). The vulnerability of the salamander species in this California study was attributed to their reliance on interstitial spaces in the streambed habitats (Welsh and Ollivier 1998, p. 1,128). We consider increased sedimentation from impervious cover to be a threat to all four central Texas salamanders, because it fills interstitial spaces, eliminates resting places, and reduces habitat of its prey base (small aquatic invertebrates) (O'Donnell *et al.* 2006, p. 34).

Also, sediments eroded from contaminated soil surfaces can concentrate and transport contaminants (Mahler and Lynch 1999, p. 165). The four central Texas salamander species and their prey species are directly exposed to sediment-borne contaminants present within the aquifer and discharging through the spring outlets. For example, in addition to sediment, trace metals such as arsenic, cadmium, copper, lead, nickel, and zinc were found in Barton Springs in the early 1990s (COA 1997, pp. 229, 231–232). Contaminants may cause adverse effects to the salamander and its prey species including reduced growth and weight, abnormal behavior, morphological and developmental aberrations, and decreased reproductive activity (Albers 2003, p. 354).

Excess sedimentation may have contributed to declines in Jollyville Plateau salamander populations in the past. Monitoring by the City of Austin found that, as sediment deposition increased at several sites, salamander abundances significantly decreased (COA 2001, pp. 101, 126). Additionally, the City of Austin found that sediment deposition rates have increased significantly along one of the long-term monitoring sites (Bull Creek Tributary 5) as a result of construction activities upstream (O'Donnell *et al.* 2006, p. 34). This site has had significant declines in salamander abundance, based on 10 years of monitoring, and the City of Austin attributes this decline to the increases in sedimentation (O'Donnell *et al.* 2006, pp. 34–35). The location of this monitoring site is within a large preserved tract. However, the headwaters of this drainage are outside the preserve and the development in this area increased sedimentation

downstream and impacted salamander habitat in the preserved tract.

Direct evidence of the effects of sedimentation on the Austin blind, Georgetown, and Salado salamanders is lacking, primarily due to limited studies on those species. However, analogies can be drawn from data on similar species, such as the Jollyville Plateau and Barton Springs salamanders. Barton Spring salamander population numbers are adversely affected by high turbidity and sedimentation (COA 1997, p. 13). Sediments discharge through Barton Springs, even during baseflow conditions (not related to a storm event) (Geismar 2005, p. 12). Storms can increase sedimentation rates substantially (Geismar 2005, p. 12). Areas in the immediate vicinity of the spring outflows lack sediment, but the remaining bedrock is sometimes covered with a layer of sediment several inches thick (Geismar 2005, p. 5). Sedimentation is a direct threat for the Austin blind salamander because its habitat in Barton Springs would fill with sediment if it were not for regular maintenance and removal (Geismar 2005, p. 12). Further development in the Barton Creek watershed will most likely be associated with diminished water clarity and a reduction in biodiversity of flora (COA 1997, p. 7). Likewise, development within the watersheds of Georgetown and Salado salamander sites will increase sedimentation and degrade water quality in salamander habitat. Therefore, because salamander population numbers are adversely affected by sedimentation covering habitat, filling in substrates, and transporting contaminants in both surface and subsurface habitats, we consider sedimentation and its resulting effects to be an ongoing, significant threat to all four central Texas salamanders' surface and subsurface habitats now and in the future. However, we consider the Salado salamander to be less affected by this threat than the other three species, due to the relatively low levels of impervious cover in its range.

Changes in Flow Regime Due to Impervious Cover

Impervious cover in a stream's watershed causes streamflow to shift from predominately baseflow, which is derived from natural filtration processes and discharges from local groundwater supplies, to predominately stormwater runoff. With increasing stormwater runoff, the amount of baseflow available to sustain water supplies during drought cycles is diminished and the frequency and severity of flooding increases. The increased quantity and velocity of

runoff increases erosion and streambank destabilization, which in turn leads to increased sediment loadings, channel widening, and detrimental changes in the morphology and aquatic ecology of the affected stream system (Hammer 1972, pp. 1535–1536, 1540; Booth 1990, pp. 407–409, 412–414; Booth and Reinelt 1993, pp. 548–550; Schueler 1994, pp. 106–108; Pizzuto *et al.* 2000, p. 82; Center for Watershed Protection 2003, pp. 41–48).

The changes in flow regime due to impervious cover can have a direct impact on salamander populations. For example, Barrett *et al.* (2010, pp. 2002–2003) recently observed that the density of aquatic southern two-lined salamanders declined more drastically in streams with urbanized watersheds compared to streams with forested or pastured watersheds. A statistical analysis indicated that this decline in urban streams was due to an increase in flooding frequency from stormwater runoff. Barrett *et al.* (2010, p. 2003) also used artificial stream experiments to demonstrate that salamanders were flushed downstream at significantly lower velocities when the substrate was sand-based, as compared to gravel, pebble, or cobble-based. Sand-based substrates are common to urban streams due to high sedimentation rates (see "Sedimentation from Stormwater Runoff" section, above). The combined effects of increased sand-based substrates due to high sedimentation rates, and increased flow velocities from impervious cover, result in effectively removing salamanders from their habitat.

Extreme flood events have occurred in all four salamander species' surface habitats (Pierce 2011a, p. 10; TPWD 2011a, p. 6; Turner 2009, p. 11; O'Donnell *et al.* 2005, p. 15). It is reasonable to assume that impervious cover due to urbanization in the salamanders' watershed will continue to cause streamflow to shift from predominately baseflow to predominately stormwater runoff. For example, an examination of 24 stream sites in the Austin area revealed that increasing impervious cover in the watersheds resulted in decreased base flow, increased high-flow events of shorter duration, and more rapid rises and falls of the stream flow (Glick *et al.* 2009, p. 9). In addition, increases in impervious cover within the Walnut Creek watershed (Jollyville Plateau salamander habitat) have probably caused a shift to more rapid rises and falls of the stream flow (Herrington 2010, p. 11). Because of the detrimental effects previously discussed in association with increased stormwater

runoff, and because the amount of baseflow available to sustain water supplies during drought cycles is diminished, we consider changes in flow regime due to impervious cover to be an ongoing threat to all four central Texas salamanders' surface habitats now and in the future. Because it only affects surface habitat, this threat is of moderate significance to the Austin blind, Jollyville Plateau, and Georgetown salamanders. We consider this threat to be of low significance for the Salado salamander due to the relatively low levels of impervious cover in its range.

Conclusion of Impervious Cover and Stormwater Runoff

In summary, impervious cover contributes to the degradation of surface and subsurface salamander habitat by transporting contaminants and sediments to the Edwards Aquifer. Impervious cover within the watersheds of the salamanders also leads to changes in streamflow regime that degrades surface salamander habitat. The Austin blind, Jollyville Plateau, and Georgetown salamanders all have levels of impervious cover in their ranges that may be causing declines in water quality. Impervious cover levels are relatively low in the range of the Salado salamander. However, growing human populations and the associated increase in urbanization indicate that impervious cover levels will continue to rise within the ranges of all four central Texas salamanders. Therefore, we consider impervious cover and stormwater runoff to be sources of stressors, such as contamination, sedimentation, and changes in streamwater's flow regime, that contribute to the overall risk of extinction for all four salamander species.

Land Application Contaminants

Excessive land application contaminants, such as nutrient and pesticide input to watershed drainages, are other forms of pollution that occur in highly urbanized areas. In comparison to nonkarstic aquifer systems, the Edwards Aquifer is more vulnerable to the effects of contamination due to: (1) A large number of conduits that offer no filtering capacity, (2) high groundwater flow velocities, and (3) the relatively short amount of time that water is inside the aquifer system (Ford and Williams 1989, pp. 518–519).

Even at low concentrations, land application contaminants, such as nutrients and pesticides, can disrupt aquatic life. Some of these chemicals may accumulate in the fatty tissue of

aquatic organisms and impair their ability to reproduce, escape predation, maintain metabolic processes, and survive (Ross 2011, p. 6). In addition, macroinvertebrates, such as small freshwater crustaceans on which these four central Texas salamander species feed are especially sensitive to water pollution (Phipps *et al.* 1995, p. 282; Miller *et al.* 2007, p. 74).

Nutrients

Nutrient input (such as phosphorus and nitrogen) to watershed drainages, which often results in abnormally high organic growth in aquatic ecosystems, can originate from multiple sources, such as human and animal wastes, industrial pollutants, and fertilizers (from lawns, golf courses, or croplands) (Garner and Mahler 2007, p. 29). As the human population grows and subsequent urbanization occurs within the ranges of these four central Texas salamander species, they likely become more susceptible to the effects of excessive nutrients within their habitats. To illustrate, an estimated 102,262 domestic dogs and cats (pet waste is a potential source of excessive nutrients) were known to occur within the Barton Springs Segment of the Edwards Aquifer in 2010 (Herrington *et al.* 2010, p. 15). Their distributions were correlated with human population density (Herrington *et al.* 2010, p. 15).

Various residential properties and golf courses are known to use pesticides, herbicides, and fertilizers to maintain turfgrass within watersheds where Jollyville Plateau salamander populations are known to occur (COA 2003, pp. 1–7). Analysis of water quality constituents conducted by the City of Austin (1997, pp. 8–9) showed significant differences in nitrate, ammonia, total dissolved solids, total suspended solids, and turbidity concentrations between watersheds dominated by golf courses, residential land, and rural land. Golf course tributaries were found to have higher concentrations of these constituents than residential tributaries, and both golf course and residential tributaries had substantially higher concentrations for these five constituents than rural tributaries (COA 1997, pp. 8–9).

Residential irrigation of wastewater effluent has led to excessive nutrient input into the recharge zone of the Barton Springs Segment of the Edwards Aquifer (Ross 2011, pp. 11–18). Wastewater effluent permits do not require treatment to remove metals, pharmaceutical chemicals, or the wide range of chemicals found in body care products, soaps, detergents, pesticides, or other cleaning products (Ross 2011,

p. 6). These chemicals remaining in treated wastewater effluent can enter streams and the aquifer and alter water quality within salamander habitat.

Excessive nutrient input into aquatic systems can increase plant growth, which pulls more oxygen out of the water when the dead plant matter decomposes, resulting in less oxygen being available in the water for salamanders to breathe (Schueler 1987, pp. 1.5–1.6; Ross 2011, p. 7). A reduction in dissolved oxygen concentrations could not only affect respiration in salamander species, but also lead to decreased metabolic functioning and growth in juveniles (Woods *et al.* 2010, p. 544), or death (Ross 2011, p. 6). Excessive plant material can also reduce stream velocities and increase sediment deposition (Ross 2011, p. 7). When the interstitial spaces become compacted or filled with fine sediment, the amount of available foraging habitat and protective cover is reduced (Welsh and Ollivier 1998, p. 1,128). Studies in the Bull Creek watershed found a loss of some sensitive macroinvertebrate species, potentially due to nutrient enrichment and sediment accumulation (COA 2001b, p. 15).

Poor water quality, particularly elevated nitrates, may also be a cause of morphological deformities in individual Jollyville Plateau salamanders. The City of Austin has documented very high levels of nitrates (averaging over 6 milligrams per liter (mg L⁻¹) with some samples exceeding 10 mg L⁻¹) and high conductivity at two monitoring sites in the Stillhouse Hollow drainage area (O'Donnell *et al.* 2006, pp. 26, 37). For comparison, nitrate levels in undeveloped Edwards Aquifer springs (watersheds without high levels of urbanization) are typically close to 1 mg L⁻¹ (O'Donnell *et al.* 2006, p. 26). The source of the nitrates in Stillhouse Hollow is thought to be lawn fertilizers (Turner 2005b, p. 11). Salamanders observed at the Stillhouse Hollow monitoring sites have shown high incidences of deformities, such as curved spines, missing eyes, missing limbs or digits, and eye injuries (O'Donnell *et al.* 2006, p. 26). These deformities often result in the salamander's inability to feed, reproduce, or survive. The Stillhouse Hollow location was also cited as having the highest observation of dead salamanders (COA 2001, p. 88). Although no statistical correlations were found between the number of deformities and nitrate concentrations (O'Donnell *et al.* 2006, p. 26), environmental toxins are the suspected cause of salamander deformities

(O'Donnell *et al.* 2006, p. 25). Nitrate toxicity studies have indicated that salamanders and other amphibians are sensitive to these pollutants (Marco *et al.* 1999, p. 2,837). Increased nitrate levels have been known to affect amphibians by altering feeding activity and causing disequilibrium and physical abnormalities (Marco *et al.* 1999, p. 2,837).

In summary, as the human population grows and subsequent urbanization occurs within the ranges of these four central Texas salamander species, they likely will become more susceptible to the effects of excessive nutrients within their surface and subsurface habitats. Because of the detrimental effects associated with increased nutrient input, we consider nutrients to be an ongoing threat to all four central Texas salamanders' continued existence throughout their ranges.

Pesticides

Pesticides are also associated with urban areas. Sources of pesticides include lawns, road rights-of-way, and managed turf areas, such as golf courses, parks, and ball fields. Pesticide application is also common in residential, recreational, and agricultural areas. Pesticides have the potential to leach into groundwater through the soil or be washed into streams by stormwater runoff.

Some of the most widely used pesticides in the United States are atrazine, carbaryl, diazinon, and simazine (Mahler and Van Metre 2000, p. 1). These four pesticides were documented within the Austin blind salamander's habitat (Barton Springs Pool and Eliza Springs) in water samples taken at Barton Springs during and after a 2-day storm event (Mahler and Van Metre 2000, pp. 1, 6, 8). They were found at levels below criteria set in the aquatic life protection section of the Texas Surface Water Quality Standards (Mahler and Van Metre 2000, p. 4). In addition, elevated concentrations of organochlorine pesticides were found in Barton Springs sediments (Ingersoll *et al.* 2001, p. 7). A later water quality study at Barton Springs from 2003 to 2005 detected atrazine, simazine, prometon, and deethylatrazine in low concentrations (Mahler *et al.* 2006, p. 63). During storm events, additional contaminants were detected, including pharmaceutical compounds such as caffeine, acetaminophen, and cotinine (Mahler *et al.* 2006, p. 64). The presence of these contaminants in Barton Springs indicates the vulnerability of salamander habitat to contaminant infiltration from surface land uses.

Another study by the U.S. Geological Survey detected insecticides (diazinon and malathion) and herbicides (atrazine, prometon, and simazine) in several Austin-area streams, most often at sites with urban and partly urban watersheds (Veenhuis and Slade 1990, pp. 45–47). Twenty-two of the 42 selected synthetic organic compounds analyzed in this study were detected more often and in larger concentrations at sites with more urban watersheds compared to undeveloped watersheds (Veenhuis and Slade 1990, p. 61). Other pesticides (dichlorodiphenyltrichloroethane, chlordane, hexachlorobenzene, and dieldrin) have been detected at multiple Jollyville Plateau salamander sites (COA 2001, p. 130).

The frequency and duration of exposure to harmful levels of pesticides have been largely unknown or undocumented for the four central Texas salamander species. Therefore, we do not know the extent to which pesticides and other waterborne contaminants have affected salamander survival, development, and reproduction, or their prey to date. However, pesticides are known to impact amphibian species in a number of ways. For example, Reylea (2009, p. 370) demonstrated that diazinon reduces growth and development in larval amphibians. Another pesticide, carbaryl, causes mortality and deformities in larval streamside salamanders (*Ambystoma barbouri*) (Rohr *et al.* 2003, p. 2,391). The Environmental Protection Agency (EPA) (2007a, p. 9) also found that carbaryl is likely to adversely affect the Barton Springs salamander both directly and indirectly through reduction of prey. Additionally, atrazine has been shown to impair sexual development in male amphibians at concentrations as low as 0.1 part per billion (Hayes 2002, p. 5,477). Atrazine levels were found to be greater than 0.44 part per billion after rainfall in Barton Springs Pool (Mahler and Van Metre 2000, pp. 4, 12).

In summary, even though we do not know the extent to which pesticides have affected the surface and subsurface habitat of the four central Texas salamander species at this time, pesticides do pose a significant, ongoing threat to the continued existence of all four salamanders throughout their ranges.

Hazardous Material Spills

The Edwards Aquifer is at risk from a variety of sources of pollutants (Ross 2011, p. 4), including hazardous materials that have the potential to be spilled, resulting in contamination of both surface and groundwater resources

(Service 2005, pp. 1.6–14–1.6–15). Any activity that involves the extraction, storage, manufacture, or transport of potentially hazardous substances, such as fuels or chemicals, can contaminate water resources and cause harm to aquatic life. Spill events can involve a short release with immediate impacts, such as a collision that involves a tanker truck carrying gasoline, or the release can be long-term, involving the slow release of chemicals over time such as a leaking underground storage tank. As of 1996, more than 6,000 leaking underground storage tanks in Texas have resulted in contaminated groundwater (Mace *et al.* 1997, p. 2), including a large leak in the range of the Georgetown salamander (Mace *et al.* 1997, p. 32). The risk of this type of contamination is expected to increase with increasing urbanization.

The transport of hazardous materials is common on many highways, which are major transportation routes (Service 2005, p. 1.6–13). Interstate Highway 35 crosses the watersheds that contribute groundwater to spring sites known to be occupied by all four salamander species. A catastrophic spill could occur if a transport truck overturned and its contents entered the recharge zone of the Northern Segment of the Edwards Aquifer. Transportation accidents involving hazardous materials spills at bridge crossings are of particular concern because recharge areas in creek beds can transport contaminants directly into the aquifer (Service 2005, p. 1.6–14). Salado salamander sites located downstream of Interstate Highway 35 may be particularly vulnerable due to their proximity to this major transportation corridor. Interstate Highway 35 crosses Salado Creek just 760 to 1,100 ft (231 to 335 m) from three spring sites (Big Boiling Springs, Lil' Bubbly Springs, and Lazy Days Fish Farm) where the Salado salamander is known to occur. Should a hazardous materials spill occur at the Interstate Highway 35 bridge that crosses at Salado Creek, the Salado salamander could be at risk from contaminants entering the water flowing into its surface habitat downstream.

In addition, the Texas Department of Transportation (TxDOT) is planning to reconstruct a section of Interstate Highway 35 within the Village of Salado (Najvar, 2009, Service, pers. comm., p. 1). This work will include replacing four bridges that cross Salado Creek (two main lane bridges and two frontage road bridges) in an effort to widen the highway at this location. This project could affect the risk of hazardous materials spills and runoff into Salado Creek upstream of known Salado

salamander locations. In August 2009, TxDOT began working with the Service to identify measures, such as the installation of permanent water quality control mechanisms to contain runoff, to protect the Salado salamander and its habitat from the effects of this project (Najvar 2009, pers. comm., p. 1).

Austin blind salamander habitat is similarly at risk from hazardous material spills that could contaminate groundwater. There is potential for a catastrophic gasoline spill in the Barton Springs Segment of the Edwards Aquifer, due to the presence of the Longhorn pipeline (Turner and O'Donnell 2004, pp. 2–3). Although a number of mitigation measures were employed to reduce the risk of a leak or spill from the Longhorn pipeline, such a spill could enter the aquifer and result in the contamination of salamander habitat at Barton Springs (EPA 2000, pp. 9–29–9–30).

Multiple water lines also run through the surrounding areas of Barton Springs. A water line break could potentially flow directly into Barton Springs, exposing salamanders to chlorine concentrations that are potentially toxic (Herrington and Turner 2009, pp. 5, 6). Sewage spills are the most common type of spill within the Barton Springs watershed and represent a potential catastrophic threat (Turner and O'Donnell 2004, p. 27). Sewage spills often include contaminants such as nutrients, PAHs, metals, pesticides, pharmaceuticals, and high levels of fecal coliform bacteria. Increased ammonia levels and reduced dissolved oxygen are the most likely impacts of a sewage spill that could cause rapid mortality of large numbers of salamanders (Turner and O'Donnell 2004, p. 27). Fecal coliform bacteria cause diseases in salamanders and their prey base (Turner and O'Donnell 2004, p. 27). Approximately 7,600 wastewater mains totaling 349 mi (561.6 km) are present in the Barton Springs Segment of the Edwards Aquifer (Herrington *et al.* 2010, p. 16). In addition, there are 9,470 known septic facilities in the Barton Springs Segment as of 2010 (Herrington *et al.* 2010, p. 5), up from 4,806 septic systems in 1995 (COA 1995, p. 3–13). In one City of Austin survey of these septic systems, over 7 percent were identified as failing (COA 1995, p. 3–18).

A contaminant spill could travel quickly through the aquifer to Barton Springs, where it could impact Austin blind salamander populations. Depending on water levels in the aquifer, groundwater flow rates through the Barton Springs Segment of the Edwards Aquifer can range from 0.6 mi

(1 km) per day to over 4 mi (6 km) per day. The relatively rapid movement of groundwater under any flow conditions provides little time for mitigation efforts to reduce potential damage from a hazardous spill anywhere within the Barton Springs Segment of the Edwards Aquifer (Turner and O'Donnell 2004, pp. 11–13).

A number of point-sources of pollutants exist within the Jollyville Plateau salamander's range. Utility structures such as storage tanks or pipelines (particularly gas and sewer lines) can accidentally discharge. Leaking underground storage tanks have been documented as a problem within the Jollyville Plateau salamander's range (COA 2001, p. 16). Sewage spills from pipelines also have been documented in watersheds supporting Jollyville Plateau salamander populations (COA 2001, pp. 16, 21, 74). For example, in 2007, a sewage line overflowed an estimated 50,000 gallons (190,000 liters) of raw sewage into the Stillhouse Hollow drainage area of Bull Creek (COA 2007b, pp. 1–3). The location of the spill was a short distance downstream of currently known salamander locations, and no salamanders were thought to be affected.

The City of Austin also cites swimming pools as a potential threat to *Eurycea* salamanders if pools are drained into waterways or storm drains without dechlorination (COA 2001, p. 130). This is due to the concentrations of chlorine commonly used in residential swimming pools, which far exceed the lethal concentrations observed in experiments with the San Marcos salamander (*Eurycea nana*) (COA 2001, p. 130). Residential swimming pools can be found throughout the watersheds of several Jollyville Plateau salamander sites and may pose a risk to the salamanders if discharged into the storm drain system or waterways.

Data on chemical spills near the City of Georgetown are lacking, but the threat of groundwater contamination from accidental spills is still present. As recently as 2011, a fuel tanker overturned in Georgetown and spilled 3,500 gallons (13,249 liters) of gasoline (McHenry *et al.* 2011, p. 1). A large plume of hydrocarbons was detected within the Edwards Aquifer underneath Georgetown in 1997 (Mace *et al.* 1997, p. 32), probably the result of a leaking fuel storage tank. There are currently eight water treatment plants within the city limits, with wastewater and chlorinated drinking water lines running throughout Georgetown salamander stream drainages (City of Georgetown 2008, p. 3.37). A “massive”

wastewater line is being constructed in the South San Gabriel River drainage (City of Georgetown 2008, p. 3.22), which is within the watershed of one known Georgetown salamander site. Almost 700 septic systems were permitted or inspected in Georgetown in 2006 (City of Georgetown 2008, p. 3.36). Even though data on chemical spills near the City of Georgetown are lacking, there is the potential for spills and contamination to occur from multiple sources.

Several groundwater contamination incidents have occurred within Salado salamander habitat (Price *et al.* 1999, p. 10). Big Boiling Springs is located on the south bank of Salado Creek, near locations of past contamination events (Chippindale *et al.* 2000, p. 43). Between 1989 and 1993, at least four incidents occurred within a quarter mile (0.4 km) from the spring site, including a 700-gallon (2,650-liter) and 400-gallon (1,514-liter) gasoline spill and petroleum leaks from two underground storage tanks (Price *et al.* 1999, p. 10). Because no follow-up studies were conducted, we have no information to indicate what effect these spills had on the species or its habitat. However, between 1991 and 1998, only a single salamander was observed at Big Boiling Springs (TPWD 2011a, p. 2).

In summary, catastrophic hazardous material spills pose a potential significant threat to the Austin blind, Georgetown, and Salado salamanders due to their restricted ranges. A significant hazardous materials spill within a stream drainage for any of these species could have the potential to threaten the long-term survival and sustainability of multiple populations or possibly an entire species. The threats from spills increase substantially under drought conditions due to lower dilution and buffering capability of impacted waterbodies. Spills under low flow conditions are predicted to have an impact at much smaller volumes (Turner and O'Donnell 2004, p. 26). For example, it is predicted that at low flows (10 cubic feet per second [cfs]) a spill of 360 gallons (1,362.7 liters) of gasoline 3 miles (4.8 km) from Barton Springs could be catastrophic for the Austin blind salamander population (Turner and O'Donnell 2004, p. 26). Because the Austin blind salamander resides in only one spring system, a catastrophic spill in its surface and subsurface habitat could cause the extinction of this species in the wild. However, because the Jollyville Plateau salamander occurs in more populations over a broader range, the potential for a catastrophic hazardous materials spill to affect the overall species' status is small.

A hazardous materials spill has the potential to cause localized populations to go extinct, but we do not consider this to be a threat to the Jollyville Plateau salamander's overall continued existence. But, in combination with the other threats identified in this five-factor analysis, we think a catastrophic hazardous materials spill could contribute to the species' risk of extinction by reducing its long-term viability. We, therefore, consider hazardous material spills to be a potential significant threat for the Austin blind and Salado salamander due to their limited distributions. Hazardous material spills are less of a threat for the more widespread Georgetown salamander. These spills pose a low risk to the Jollyville Plateau salamander due to its more widespread distribution.

Construction Activities

Short-term increases in pollutants, particularly sediments, can occur during construction in areas of new development. When vegetation is removed and rain falls on unprotected soils, large discharges of suspended sediments can erode from newly exposed areas, resulting in increased sedimentation in downstream drainage channels (Schueler 1987, pp. 1–4; Turner 2003, p. 24; O'Donnell *et al.* 2005, p. 15). This increased sedimentation from construction activities has been linked to declines in Jollyville Plateau salamander counts at multiple sites (Turner 2003, p. 24; O'Donnell *et al.* 2006, p. 34). Cave sites are also impacted by construction, as Testudo Tube Cave (Jollyville Plateau salamander habitat) showed an increase in nickel, calcium, and nitrate/nitrite after nearby road construction (Richter 2009, pp. 6–7). Barton Springs (Austin blind salamander habitat) is also under the threat of pollutant loading due to its proximity to construction activities and location at the downstream side of the watershed (COA 1997, p. 237). The City of Austin (1995, p. 3–11) estimated that construction-related sediment and in-channel erosion accounted for approximately 80 percent of the average annual sediment load in the Barton Springs watershed. In addition, the City of Austin (1995, p. 3–10) estimated that total suspended sediment loads have increased 270 percent over pre-development loadings within the Barton Springs Segment of the Edwards Aquifer. At this time, we are not aware of any studies that have examined sediment loading due to construction activities within the watersheds of Georgetown or Salado salamander habitats. However, because construction

occurs in many of these watersheds, we believe that the threat of construction in areas of new development applies to these species as well. Construction is intermittent and temporary, but it affects both surface and subsurface habitats. Therefore, we have determined that this threat is ongoing and is and will continue to affect the Austin blind, Jollyville Plateau, and Georgetown salamanders and their habitats. However, we consider this threat to affect the Salado salamander to a lesser degree due to the relatively low levels of impervious cover in its range.

Also, the physical construction of pipelines has the potential to modify subsurface habitat for salamander species. It is known that these salamanders inhabit the subsurface environment. Tunneling for underground pipelines can destroy potential habitat by removing subsurface material. Additional material can become dislodged and result in increased sediment loading into the aquifer and associated spring systems. In addition, disruption of water flow to springs inhabited by salamanders can occur through the construction of tunnels and vertical shafts. Because detailed maps of the underground conduits that feed springs in the Edwards Aquifer are not available, tunnels and shafts have the possibility of intercepting and severing those conduits (COA 2010b, p. 28). Affected springs could rapidly become dry and would not support salamander populations. The closer a shaft or tunnel location is to a spring, the more likely that the construction will impact a spring (COA 2010b, p. 28). This has presumably occurred in the past at Moss Gulley Spring, where the drilling of a nearby test well in the mid-1980s led to the dewatering of the spring (Hillis *et al.* 2010, p. 2). Jollyville Plateau salamanders have not been observed at that site since the spring stopped flowing (Hillis *et al.* 2010, p. 2). Even small shafts pose a threat to nearby spring systems, and therefore, we consider construction of pipelines to be a future threat to the surface and subsurface habitat of all four salamander species. However, we consider this a low significance threat for the Jollyville Plateau salamander because tunnels or shafts are likely to only impact a few populations. Because there are currently no known projects that are likely to occur within the species' range, we consider this a threat of low significance for the Austin blind, Georgetown, and Salado salamanders.

Likewise, we consider tunnel and shaft construction to be a threat to the Jollyville Plateau salamander's surface

and subsurface habitat due to its potential to intercept groundwater flow and dewatering. In 2011, construction began on the Jollyville Transmission Main (JTM), a tunnel designed to transport treated drinking water from Water Treatment Plant No. 4 to the Jollyville Reservoir. The project also includes four working shafts along the tunnel route (COA 2010b, p. 1). Because the tunnel is being constructed below the Edwards Aquifer and below the permeable portion of the Glen Rose formation (COA 2010b, p. 42; Toohey 2011, p. 1; COA 2011c, p. 36, 46), the threat to the salamander from this particular tunnel is considered low. The vertical shafts that are being drilled down through the Edwards Aquifer are a more significant concern.

Of the four shafts, only the one at the Four Points location appears to be a potential threat to any Jollyville Plateau salamanders. The Parks and Recreation Department (PARD) shaft is in the Glen Rose (not the Edwards) formation (Service 2010a; COA 2011c, p. 33) and therefore is not expected to affect Edwards Aquifer groundwater. The Jollyville Reservoir Shaft is on the other side of a groundwater divide from any springs within a mile of the site (Service 2010a). The shaft at the water treatment plant is going through a portion of the Edwards formation that is dry (COA 2011c, p. 33). There are 8 of 92 known Jollyville Plateau salamander sites within 1 mi (1.6 km) of the Four Points shaft location. The closest locations (Spring 21 and Spring 24) are about 2,000 ft (610 m) or greater from the shaft. Best management practices designed to protect groundwater resources have been implemented into the design and construction of the JTM shafts. These practices include, but are not limited to: Monitoring groundwater quality and spring flow, minimizing sediment discharges during construction, developing a groundwater impact contingency plan, locating working shafts in areas where the chance of encountering conduits to salamander springs is reduced, and re-routing conduit flow paths around the shaft if encountered (COA 2010b, pp. 51–55).

We believe that these best management practices have lowered the magnitude of the threat to the Jollyville Plateau salamander. However, a leak occurred at one shaft site (Four Points) in December 2011, and it was associated with an initial 1-foot (0.3 m) drop in the aquifer level (Toohey 2011, p. 2) as measured in a monitoring well 10 ft (3 m) away. A 1-foot (0.3-m) drop in water level was also seen in a monitoring well 100 ft (30 m) away, but not in

monitoring wells farther out. The City did not see any drops in flow at the springs they were monitoring or in wells between those springs and the well 100 ft away; however, they do not have access to the closest springs (mentioned above). Since that time, grout has been injected into the shaft wall to stop the leak. Preliminary evidence indicates that the grout injection resulted in a tight seal at the site of the leak (Lesniak 2012, City of Austin, pers. comm.). Even so, we consider tunnel and shaft construction of the JTM to be a threat now to the Jollyville Plateau salamander's habitat due to its potential to intercept groundwater flow and to dewater; however, we consider this threat to be of low significance because the best management practices have been implemented into the design and construction of the JTM shafts to protect groundwater resources.

Lastly, limestone rock is an important raw material that is mined in quarries all over the world due to its popularity as a building material and its use in the manufacture of cement (Vermeulen and Whitten 1999, p. 1). The construction activities within rock quarries can permanently alter the geology and groundwater hydrology of the immediate area, and adversely affect springs that are hydrologically connected to impacted sites. The potential environmental impacts of quarries include outright destruction of springs or collapse of karst caverns, as well as impacts to water quality through siltation and sedimentation, and impacts to water quantity through water diversion, dewatering, and reduced flows (Ekmekci 1990, p. 4). Limestone is a common geologic feature of the Edwards Aquifer, and active quarries exist throughout the region. For example, at least three Georgetown salamander sites (Avant Spring, Knight (Crockett Gardens) Spring, and Cedar Breaks Hiking Trail Spring) occur adjacent to a limestone quarry that has been active since at least 1995. The population status of the Georgetown salamander is unknown at Knight Spring and Cedar Breaks Hiking Trail Spring, but salamanders are seen infrequently and in low abundance at the closest spring to the quarry (Avant Spring; Pierce 2011c, pers. comm.). Because quarries may only affect a small portion of the species' ranges, we consider the mining of limestone rock to be an ongoing threat with limited effect to the Georgetown, Jollyville Plateau, and Salado salamanders, but not the Austin blind salamander. The Austin blind salamander's range is located in downtown Austin, and there are no

active limestone quarries within the species' range.

Water Quantity Reduction in Relation to Urbanization

The Northern Segment of the Edwards Aquifer is the primary supply of water for Jollyville Plateau, Georgetown, and Salado salamander habitat (Cole 1995, p. 33; TPWD 2011a, p. 3). In general, the aquifer has been described as localized, small, and highly susceptible to drying or draining (Chippindale *et al.* 2000, p. 36).

Urbanization and rapid population growth in the Northern Segment of the Edwards Aquifer may contribute to reduced spring flows due to increases in groundwater pumping. From 1980 to 2000, groundwater pumping in the Northern Segment of the Edwards Aquifer nearly doubled (TWDB 2003, pp. 32–33). The City of Georgetown predicts the average water demand to increase from 8.21 million gallons per day in 2003, to 10.9 million gallons per day by 2030 (City of Georgetown 2008, p. 3.36). Under peak flow demands (18 million gallons per day in 2003), the City of Georgetown uses seven groundwater wells in the Edwards Aquifer (City of Georgetown 2008, p. 3.36). Total water use for Williamson County was 73,532 ac ft in 2010, and is projected to increase to 98,268 ac ft by 2020, and to 211,854 ac ft by 2060, representing a 188 percent increase over the 50-year period (TWDB 2010, p. 46). Similarly, Bell County and Travis County expect a 59 percent and 91 percent increase in total water use over the same 50-year period, respectively (TWDB 2010, pp. 46, 64).

One prediction of future groundwater use in this area suggests a large drop in pumping as municipalities convert from groundwater to surface water supplies (TWDB 2003, p. 65). However, it is unknown if this reduction in groundwater use translates to adequate spring flows for salamanders. Increased urbanization in the watershed has been cited as one factor, in combination with drought, causing declines in spring flows (City of Austin 2006, pp. 46–47; TPWD 2011a, pp. 4–5). Urbanization removes the ability of the watershed to allow slow filtration of water through soils following rain events. Instead rainfall runs off impervious surfaces and into stream channels at higher rates, increasing downstream flows and decreasing groundwater recharge (Miller *et al.* 2007, p. 74).

The City of Austin found a negative correlation between urbanization and spring flows at Jollyville Plateau salamander sites (Turner 2003, p. 11). Field studies have also shown that a

number of springs that support Jollyville Plateau salamanders have already gone dry periodically, and that spring waters resurface following rain events (O'Donnell *et al.* 2006, pp. 46–47). The San Gabriel Springs (Georgetown salamander habitat) are now intermittently flowing in the summer due to pumping from nearby water wells (TPWD 2011a, p. 9). Salamanders have not been seen on the surface there since 1991 (Chippindale *et al.* 2000, p. 40; Pierce 2011b, pers. comm.).

In combination with drought, groundwater pumping has a direct impact on spring flows. Groundwater availability models demonstrate that 1 cfs of pumping will diminish Barton Springs spring flow by 1 cfs under drought-of-record (1950s drought) conditions (Smith and Hunt 2004, pp. 24, 36). Under the same conditions, these models suggest that present-day pumping rates will temporarily cease Barton Springs flow on a daily basis (Smith and Hunt 2004, pp. 24, 36).

Groundwater pumping can lead to saline water encroachments in the aquifer. As groundwater levels decline, a decrease in hydrostatic pressure occurs and saline groundwater is able to penetrate up into the lower portion of the aquifer (Pavlicek *et al.* 1987, p. 2). This saline water encroachment would threaten the freshwater biota in the springs and the aquifer, including the four central Texas salamander species and their prey, by dramatically increasing the water salinity. Water quality in the Barton Springs Segment of the Edwards Aquifer has been degraded in the past due to saline encroachment (Slade *et al.* 1986, p. 62). This water quality degradation occurred when Barton Springs discharge was less than 30 cfs (Slade *et al.* 1986, p. 64). An analysis of more recent data found similar declines in water quality as the flow of Barton Springs dropped into the 20 to 30 cfs range (Johns 2006, pp. 6–7). As mentioned earlier, reduced groundwater levels would also increase the concentration of pollutants in the aquifer. Flows at Barton Springs dropped below 17 cfs as recently as mid-November 2011 (Barton Springs/Edwards Aquifer Conservation District 2011, p. 1).

Although water quantity decreases and spring flow declines are cited as a threat to *Eurycea* salamanders (Corn *et al.* 2003, p. 36; Bowles *et al.* 2006, p. 111), these species display some adaptive behavior to deal with periods of periodic surface flow losses. All four salamander species apparently spend some part of their life history in underground aquatic habitats and have the ability to retreat underground when

surface flows decline. For example, one of the City of Austin monitoring sites where Jollyville Plateau salamanders are most abundant undergoes periods where there is no surface water habitat available for the salamander (O'Donnell *et al.* 2006, p. 47). Jollyville Plateau salamander juveniles were observed at Lanier Spring following 10 months of dry conditions on the surface, indicating that the salamanders are likely able to reproduce in the subsurface environment during a drought (Bendik 2011a, p. 32). Salado salamanders also reappeared in Robertson Springs after the springs went temporarily dry in 2009 (TPWD 2011a, p. 5). However, drying spring habitats can result in stranding salamanders, resulting in death of individuals (O'Donnell *et al.* 2006, p. 16). It is also known that prey availability for carnivores is low underground due to the lack of primary production (Hobbs and Culver 2009, p. 392). This is supported by recent evidence of "shrinkage" in Jollyville Plateau salamander body length following periods of no springflow (Bendik 2011b, pers. comm.). Length measurements taken during a COA mark-recapture study at Lanier Spring demonstrated that Jollyville Plateau salamanders had negative growth during a 10-month period of no springflow in 2008–2009 (Bendik 2011b, pers. comm.). Therefore, although central Texas salamanders can survive and reproduce underground, the best available scientific evidence shows that these animals need the energy-rich surface habitat for positive growth and development.

In summary, water quantity reduction in relation to urbanization is an ongoing threat to all four salamanders throughout their ranges, primarily due to increased groundwater pumping in the presence of drought conditions and potential increases in saline water encroachments in the aquifer. However, we believe this threat is having or likely to have only a moderate effect, because the salamanders have the ability to retreat underground when surface flows decline.

Physical Modification of Surface Habitat

All four salamanders are sensitive to direct physical modification of surface habitat from impoundments, feral hogs, livestock, and other human activities. Because these threats only impact the surface habitat of salamanders, and because each species has the ability to retreat to subsurface habitats for shelter, none of these threats is likely to result in a significant impact to the species or their habitat. However, in combination

with other threats discussed above, these threats may contribute to the species' risk of extinction.

Impoundments

Impoundments disrupt the natural flow regime of streams, leading to a variety of stressors that impact the salamanders and their surface habitats. For example, a low water crossing on a tributary of Bull Creek, occupied by the Jollyville Plateau salamander, resulted in sediment build-up below the impoundment and a scour hole above the impoundment that supported predaceous fish (O'Donnell *et al.* 2008, p. 1). As a result, Jollyville Plateau salamanders were not found in this degraded habitat after the impoundment was constructed. When the crossing was removed in October 2008, the sediment build-up was removed, the scour hole was filled, and salamanders were later observed (Bendik 2011b, pers. comm.). Many low-water crossings are present near other Jollyville Plateau salamander sites (Bendik 2011b, pers. comm.). Impoundments only impact the surface habitat of salamanders. Because impoundments are likely to impact a small portion of the species' range, we consider impoundments caused by low-water crossings to be an ongoing threat of limited effect on the Jollyville Plateau salamander and its surface habitat, now and in the future.

Impoundments have also impacted surface habitat for the other salamander species. Most of the spring outlets in the Village of Salado, including the Salado salamander type locality at Big Boiling Springs, were modified by dam construction in the mid-1800s, to supply power to various mills (Brune 1981, p. 67). Two sites for the Georgetown salamander have spring openings that are confined to brick and mortar spring boxes (White 2011, SWCA, pers. comm.; Booker 2011, p. 1), presumably to collect the spring water for cattle. All spring sites for the Austin blind salamander (Main, Eliza, and Sunken Garden springs) have been impounded for recreational use. These sites were impounded in the early to mid-1900s. For example, Eliza Spring now discharges from 7 openings (each 1 ft (0.3 m) in diameter) in the concrete floor and 13 rectangular vents along the edges of the concrete. While the manmade structures help retain water in the spring pools during low flows, they have altered the salamander's natural environment. The impoundments have changed the Barton Springs ecosystem from a stream-like system to a more lentic (still water) environment, thereby reducing the water system's ability to flush sediments downstream and out of

salamander habitat. Although a natural surface flow connection between Sunken Gardens Spring and Barton Creek has been restored recently (COA 2007c, p. 6), the Barton Springs system as a whole remains highly modified. Therefore, we consider impoundments to be an ongoing threat to the Salado, Georgetown, and Austin blind salamanders and their surface habitat, now and in the future. This threat has a limited effect on the Salado and Georgetown salamanders because it impacts a small portion of the species' ranges, but has a large effect on the Austin blind salamander because it affects this species' entire range.

Feral Hogs

There are between 1.8 and 3.4 million feral hogs (*Sus scrofa*) in Texas (TAMU 2011, p. 2). They prefer to live around moist areas, including riparian areas near streams, where they can dig into the soft ground for food and wallow in mud to keep cool (Mapson 2004, pp. 11, 14–15). Feral hogs disrupt these ecosystems by decreasing plant species diversity, increasing invasive species abundance, increasing soil nitrogen, and exposing bare ground (Texas A&M University (TAMU) 2012, p. 4). Feral hogs negatively impact surface salamander habitat by digging and wallowing in spring heads, which increases sedimentation downstream (O'Donnell *et al.* 2006, pp. 34, 46). They have been cited as a source of elevated bacteria, nitrates, and phosphorus to streams in the Austin area (Timmons *et al.* 2011, pp. 1–2).

Feral hogs have become abundant in some areas where the Jollyville Plateau, Georgetown, and Salado salamanders occur. O'Donnell *et al.* (2006, p. 34) noted that feral hog activity was increasing in the Bull and Cypress creek watersheds. Evidence of hogs has also been observed near one Georgetown salamander site (Cobbs Spring) (Booker 2011, p. 1). The landowner of Cobbs Spring is actively trapping feral hogs (Booker 2011, p. 1), but the effectiveness of this management has not been assessed. Feral hogs are also present in the area of several Salado salamander sites. Fortunately, feral hogs cannot access Austin blind salamander sites due to fencing and their location in downtown Austin.

In summary, because of their abundance and potential to negatively impact surface salamander habitat, we consider feral hogs to be an ongoing threat of low significance to the Jollyville Plateau, Georgetown, and Salado salamanders. As previously stated, we do not consider feral hogs to

be a threat to the Austin blind salamander at this time.

Livestock

Similar to feral hogs, livestock can negatively impact surface salamander habitat by disturbing the substrate and increasing sedimentation in the spring run where salamanders are often found. Poorly managed livestock grazing results in changes in vegetation (from grass-dominated to brush-dominated), which leads to increased erosion of the soil profile (COA 1995, p. 3–59). Grazing near streams can negatively impact nutrients, bacteria, species diversity, and water temperature in stream systems (COA 1995, p. 3–62). Evidence of trampling and grazing in riparian areas from cattle can be found at one Georgetown salamander site (White 2011, SWCA, pers. comm.), and cattle are present on at least one other Georgetown salamander site. Cattle are also present on lands where four Salado salamander sites occur (Gluesenkamp 2011b, pers. comm.; Texas Section Society for Range Management 2011, p. 2). Austin blind salamander habitat is inside a City of Austin park, and livestock are not allowed in the spring areas. Much of the Jollyville Plateau salamander habitat is in suburban areas, and we are not aware of livestock damage in those areas.

There is some management of livestock occurring that reduces the magnitude of negative impacts. An 8,126-ac (3,288-ha) property in Bell County with at least three Salado salamander sites has limited its cattle rotation to a maximum of 450 head (Texas Section Society for Range Management 2011, p. 2), which is considered a moderate stocking rate. The landowners at four of the springs with Salado salamanders have been considering options for fencing off spring outlets to protect the salamander habitat from cattle damage (Harrell 2012, Service, pers. comm.). In addition, the landowner of Cobbs Spring (a Georgetown salamander site) is in the process of phasing out cattle on the property (Boyd 2011, Williamson County Conservation Foundation, pers. comm.).

In summary, even though livestock may be having impacts at four of the seven Salado salamander spring sites, we believe livestock to be an ongoing threat of low impact to this salamander's habitat because there is some management of the livestock that reduces the magnitude of negative impacts. Even though habitat degradation by livestock is a factor that seems to be impacting the habitat of the Georgetown salamander, we do not

believe it is occurring at a scale that significantly contributes to the risk of extinction of the species on its own. However, in combination with the other threats identified in this five-factor analysis, we think livestock may be contributing to the species' risk of extinction by reducing its long-term viability. Livestock are not a threat to the continued existence of the Austin blind or Jollyville Plateau salamanders.

Other Human Activities

Some sites for the four central Texas salamanders have been directly modified by human-related activities. In the summer of 2008, a spring opening at a Salado salamander site was covered with gravel (Service 2010b, p. 6). Although we received anecdotal information that at least one salamander was observed at the site after the gravel was dumped at Big Boiling Springs, the Service has no detailed information on how the Salado salamander was affected by this action. Heavy machinery is continuously used in the riparian area of Big Boiling and Lil' Bubbly Springs to clear out vegetation and maintain a grassy lawn to the water's edge (Gluesenkamp 2011a,b, pers. comm.), which has led to erosion problems during flood events (TPWD 2011a, p. 6). The modification of springs for recreation or other purposes degrades natural riparian areas, which are important for controlling erosion and attenuating floodwaters in aquatic habitats. Other continuing human activities at Big Boiling Spring include pumping water from the spring opening, contouring the substrate of the spring environment, and covering spring openings with gravel (TPWD 2011a, p. 4). For example, in the fall of 2011, the outflow channels and edges of these two springs were reconstructed with large limestone blocks and mortar. In addition, in response to other activity in the area, the U.S. Army Corps of Engineers issued a cease and desist order to the Salado Chamber of Commerce in October 2011, for unauthorized discharge of dredged or fill material that occurred in this area (Brooks 2011, U.S. Corps of Engineers, pers. comm.). This order was issued in relation to the need for a section 404 permit under the Clean Water Act (33 U.S.C. 1251 et seq.). Also in October 2011, a TPWD game warden issued a citation to the Salado Chamber of Commerce due to the need for a sand and gravel permit from the TPWD for work being conducted within TPWD's jurisdiction (Heger 2012a, TPWD, pers. comm.). The citation was issued because the Salado Chamber of Commerce had been directed by the

game warden to stop work within TPWD's jurisdiction, which Salado Chamber of Commerce did temporarily, but work started again in spite of the game warden's directive (Heger 2012a, pers. comm.). A sand and gravel permit was obtained on March 21, 2012. The spring run modifications were already completed by this date, but further modifications in the springs were prohibited by the permit. Additional work on the bank upstream of the springs was permitted and completed (Heger 2012b, pers. comm.).

Because the Salado salamander is only known from seven spring locations, any type of human-related activities, such as pumping water from a spring opening, contouring the substrate of a spring environment, and covering spring openings with gravel, may have significant detrimental effects on the salamander and its habitat. These activities only affect the surface salamander habitat. Therefore, we consider these types of human-related activities to be ongoing threats of low impact to the Salado salamander's continued existence.

Furthermore, frequent human visitation associated with easily accessed habitat of the four salamanders may negatively affect the species and their habitat. Documentation from the City of Austin of disturbed vegetation, vandalism, and the destruction of travertine deposits (fragile rock formations formed by deposit of calcium carbonate on stream bottoms) by foot traffic has been documented at one of their Jollyville Plateau salamander monitoring sites in the Bull Creek watershed (COA 2001, p. 21) and may result in direct destruction of small amounts of the salamander's habitat. Eliza Spring and Sunken Garden Spring, two of the three locations of the Austin blind salamander, also experience vandalism, despite the presence of fencing and signage (Dries 2011, City of Austin, pers. comm.). The deep water of the third location (Main Pool) likely protects the Austin blind salamander's surface habitat from damage from frequent human recreation. Therefore, we consider human visitation to be an ongoing threat of low impact to the Jollyville Plateau salamander, and a threat of moderate impact to the Austin blind salamander, now and in the future.

Lastly, at the complex of springs occupied by the Georgetown salamander within San Gabriel River Park, a thick bed of nonnative granite gravel has been placed in the spring runs (TPWD 2011a, p. 9). This pea gravel is too small to serve as cover habitat and does not form the interstitial spaces required for

Georgetown salamanders. Salamanders have not been observed here since 1991 (Chippindale *et al.* 2000, p. 40; Pierce 2011b, pers. comm.). Gravel dumping has not been documented at any other Georgetown salamander sites. Because this activity may have contributed to the decline of only this single population, we do not consider substrate modification in the form of gravel dumping to be a threat to the existence of the Georgetown salamander by itself. However, in combination with the other threats identified in this five-factor analysis, we think substrate modification may be contributing to the species' risk of extinction by reducing its long-term viability.

Drought and Flooding

Broad drought and flooding events have proven to have large impacts on the central Texas salamanders by drastically reducing or increasing the amount of water and affecting habitat quality.

Drought

The presence of water is an essential component to salamander habitat. Drought conditions alter the hydrologic conditions resulting in lowering groundwater tables and reduced spring flows. The impacts of drought are compounded by other consumptive uses of the aquifer such as groundwater pumping. The Northern Segment of the Edwards Aquifer, which supplies water to Jollyville Plateau, Georgetown, and Salado salamander habitat, is vulnerable to drought (Chippindale *et al.* 2000, p. 36). In particular, the portion of the Edwards Aquifer underlying the Jollyville Plateau is relatively shallow, with a high elevation, thus being unlikely to be able to sustain spring flows during periods of drought (Cole 1995, pp. 26–27). Drought in the watershed has been cited as one factor, in combination with urbanization, causing declines in spring flows (O'Donnell *et al.* 2006, pp. 46–47). A recent drought lasting from 2008 to 2009 was considered one of the worst droughts in central Texas history and caused numerous Jollyville Plateau salamander sites to go dry (Bendik 2011a, p. 31). An even more pronounced drought throughout Texas began in 2010, with the period from October 2010, through September 2011, being the driest 12-month period in Texas since rainfall records began (LCRA 2011, p. 1). Rainfall in early 2012 has lessened the intensity of the current drought, but below average rainfall and above average temperatures are forecasted for the summer of 2012 (LCRA 2012, p. 1).

Low flow conditions during drought also have negative impacts to the Austin blind salamander and its ecosystem in the Edwards Aquifer and at Barton Springs. The long-term average flow at the Barton Springs outlets is approximately 53 cfs (City of Austin 1998, p. 13; Smith and Hunt 2004, p. 10). The lowest flow recorded at Barton Springs was about 10 cfs during a record drought in the 1950s (COA 1998, p. 13). Discharge at Barton Springs decreases as water levels in the Barton Springs Segment of the Edwards Aquifer drop. Decreased discharge is associated with increases in water temperature, decreases in spring flow speed, and increases in sedimentation (COA 2011d, pp. 19, 24, 27). Large declines in aquifer levels have historically been due to a lack of adequate rainfall recharging the aquifer. In a 2004 groundwater flow modeling study, the Barton Springs Edwards Aquifer Conservation District predicted that under drought-of-record conditions and current pumping levels, the mean monthly springflow would be about 1 cfs. This study also indicated that under drought-of-record conditions, projected pumping rates for future years would cause Barton Springs to cease flowing for at least 4 months out of a year (Smith and Hunt 2004, pp. 1, 20, 24).

The specific effects of low flow on central Texas salamanders can be inferred by examining studies on the Barton Springs salamander. Drought decreases spring flow and dissolved oxygen levels and increases temperature in Barton Springs (Turner 2004, p. 2; Turner 2009, p. 14). Low dissolved oxygen levels decrease reproduction in Barton Springs salamanders (Turner 2004, p. 6; 2009, p. 14). Turner (2009, p. 14) also found that Barton Springs salamander counts decline with decreasing discharge (and thus declining dissolved oxygen levels). A prolonged drought from June 2008 through September 2009 caused decreases in Barton Springs salamander abundance (COA 2011d, pp. 19, 24, 27). The drought in 2011 resulted in dissolved oxygen concentrations so low that City of Austin used an aeration system to maintain oxygenated water in Eliza and Sunken Gardens Springs (Dries 2011, City of Austin, pers. comm.). Drought also lowers water quality in Barton Springs due to saline water encroachments in the Barton Springs Segment of the Edwards Aquifer (Slade *et al.* 1986, p. 62; Johns 2006, p. 8).

In summary, we consider drought to be an ongoing threat to all four salamanders, because it can cause direct mortality to salamanders by desiccation

if they are unable to retreat underground, it increases competition for spaces and resources (Bendik 2011a, p. 31), and it negatively affects their habitat, as discussed above. However, we consider the threat of drought to have a limited impact to all four central Texas salamanders and their habitats because they may be evolutionarily adapted to drought conditions that are common to the region (Bendik 2011a, pp. 31–32). At the same time, climate change and groundwater pumping may exacerbate drought conditions to the point where salamanders cannot adapt (see “Climate Change”, below, and “Water Quantity Reduction in Relation to Urbanization”, above).

Flooding

Flooding as a result of rainfall events can dramatically alter the substrate and hydrology of salamander habitat. A flood event in September 2010 modified surface habitat for the Georgetown salamander at two sites (Pierce 2011a, p. 10). The stormwater runoff caused erosion, scouring of the streambed channel, the loss of large rocks, and the creation of several deep pools. Salamander densities dropped dramatically in the days following the flood, and at one site, remained at low levels until habitat restoration (returning large rocks to the spring run) took place in the spring of 2011 (Pierce 2011a, p. 11). Likewise, three storm events in 2009 and 2010 deposited sediment and other material on top of spring openings at Salado Spring, preventing salamanders from foraging (TPWD 2011a, p. 6). The increased flow rate from flooding causes unusually high dissolved oxygen concentrations, which may exert direct or indirect, sublethal effects (reduced reproduction or foraging success) on salamanders (Turner 2009, p. 11). In addition, Geismar (2005, p. 2) found that flooding increases contaminants and sediments in Barton Springs. In 2007, flooding resulted in repeated accumulation of sediment in the Main Pool of Barton Springs that was so rapid that cleaning by City of Austin staff was not frequent enough to keep the surface habitat from becoming embedded (COA 2007c, p. 4). Flooding likely has similar effects on contaminants and sediments in other salamander habitat, but we are not aware of other studies.

The four salamanders' surface habitat is characterized by shallow water depth (COA 2001, p. 128; Pierce 2011a, p. 3), but deep pools are sometimes formed within stream channels from the scouring of floods. Tumilson *et al.* (1990, p. 172) found that the abundance of one *Eurycea* species decreased as

water depth increased. This relationship may be caused by an increase in predation pressure, as deeper water supports predaceous fish populations. However, several central Texas *Eurycea* species are able to thrive in deep water environments in the presence of many predators (for example, San Marcos salamander in Spring Lake, *Eurycea* sp. in Landa Lake, Barton Springs salamander in Barton Springs Pool). Anti-predator behaviors may allow these species to co-exist with predaceous fish, and the effectiveness of these behaviors may be species-specific (reviewed in Pierce and Wall 2011, pp. 18–19). The specific resistance to predation from fish for the four central Texas salamanders is unknown. In any case, flooding can alter the surface habitat by deepening stream channels, which may increase predaceous fish.

Also, salamanders may be flushed from the surface habitat by strong flows during flooding. Bowles *et al.* (2006, p. 117) observed no Jollyville Plateau salamanders in riffle habitat at one site during high water velocities and hypothesized that individual salamanders were either flushed downstream or retreated to the subsurface. This site had a relatively undeveloped watershed (Bowles *et al.* 2006, p. 112), indicating that the runoff was largely natural and not caused by impervious cover.

In conclusion, flooding is a naturally occurring event that all four salamander species have adapted to in the past. Further, even though flooding is a factor that seems to be impacting all four salamanders' surface habitats, we do not believe it is occurring at a scale that would cause the extinction of any of the salamanders on its own. Because of this, we consider flooding on its own to have a limited effect on the species and their habitats. However, in combination with the other threats identified in this five-factor analysis, we think flooding may be contributing to the species' risk of extinction by reducing its long-term viability. The intensity of flooding events has increased due to increases in impervious cover. As previously noted, once natural vegetation in a watershed is replaced with impervious cover, rainfall is converted to surface runoff instead of filtering through the ground (Schueler 1991, p. 114). Impervious cover in a stream's watershed causes streamflow to shift from predominately baseflow, which is derived from natural filtration processes and discharges from local groundwater supplies, to predominately stormwater runoff. With increasing stormwater runoff, the amount of baseflow available to sustain water supplies during drought cycles is

diminished and the frequency and severity of flooding increases. Because of the detrimental effects previously discussed in association with increased stormwater runoff, we consider changes in flow regime due to impervious cover to be an ongoing threat to all four central Texas salamanders' surface habitats.

Climate Change

Future climate change could potentially affect water quantity and spring flow for the four salamander species. According to the Intergovernmental Panel on Climate Change (IPCC 2007, p. 1), "warming of the climate system is unequivocal, as is now evident from observations of increases in global averages of air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level." Localized projections suggest the southwest United States may experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007, p. 8), with warming increases in southwestern States greatest in the summer. The IPCC also predicts hot extremes, heat waves, and heavy precipitation will increase in frequency (IPCC 2007, p. 8).

Climate change could compound the threat of decreased water quantity at salamander spring sites. An increased risk of drought could occur if evaporation exceeds precipitation levels in a particular region due to increased greenhouse gases in the atmosphere (CH2M HILL 2007, p. 18). The Edwards Aquifer is also predicted to experience additional stress from climate change that could lead to decreased recharge and low or ceased springflows given increasing pumping demands (Loáiciga *et al.* 2000, pp. 192–193). CH2M HILL (2007, pp. 22–23) identified possible effects of climate change on water resources within the Lower Colorado River Watershed (which contributes recharge to Barton Springs). A reduction of recharge to aquifers and a greater likelihood for more extreme droughts were identified as potential impacts to water resources (CH2M HILL 2007, p. 23). The droughts of 2008 to 2009, and 2010 to 2011, were two of the worst in central Texas history, with the period from October 2010, through September 2011, being the driest 12-month period in Texas since rainfall records began (LCRA 2011, p. 1). Rainfall in early 2012 has lessened the intensity of the current drought, but below average rainfall and above average temperatures are forecasted for the summer of 2012 (LCRA 2012, p. 1).

In summary, the effects of climate change could potentially lead to

detrimental impacts on aquifer-dependent species, especially coupled with other threats on water quality and quantity. However, there are little data available to correlate groundwater trends and climate change, and groundwater typically represents an integration of past climatic conditions over many years due to its time within an aquifer system (Mace and Wade 2008, p. 657). Recharge, pumping, natural discharge, and saline intrusion of groundwater systems could all be affected by climate change (Mace and Wade 2008, p. 657). Because climate change has the potential to negatively affect water quality and spring flow, we consider climate change to be a potential threat to all four central Texas salamanders and their habitats, now and in the future.

Land Conservation Programs and Plans

The Williamson County Conservation Foundation (Foundation), a nonprofit organization established by Williamson County in 2002, is currently working to find ways to conserve endangered species and other unlisted species of concern in Williamson County, Texas. This organization held a Georgetown salamander workshop in November 2003, in an effort to bring together landowners, ranchers, farmers, developers, local and State officials, Federal agencies, and biologists to discuss information currently known about the Georgetown salamander and to educate the public on the threats faced by this species.

With the help of a grant funded through section 6 of the Act, the Foundation developed the Williamson County Regional HCP to obtain a section 10(a)(1)(B) permit for incidental take of federally listed endangered species in Williamson County, Texas. This HCP became final in October 2008. Although the Georgetown salamander is not currently listed and is not a "covered" species, the Foundation has included considerations for the Georgetown salamander in the HCP. In particular, they plan to conduct a status review of the Georgetown salamander. The Foundation plans to fund at least \$50,000 per year for 5 years for monitoring, surveying, and gathering baseline data on water quality and quantity at salamander spring sites. Information gathered during this status review will be used to develop a conservation strategy for this species. The Foundation began allocating funding for Georgetown salamander research and monitoring beginning in 2010. A portion of that funding supported mark-recapture studies of the Georgetown salamander at two of its

known localities (Twin Springs and Swinbank Spring) in 2010 and 2011 (Pierce 2011a, p. 20). Additional funds have been directed at water quality assessments of at least two known localities and efforts to find previously undiscovered Georgetown salamander populations (Boyd 2011, pers. comm.). Although Jollyville Plateau salamanders are present in southwest Williamson County and Salado salamander spring sites are likely influenced by the Edwards Aquifer Recharge Zone in northern Williamson County, the regional HCP does not include considerations for these species. Also, Austin blind salamanders are not affected by this HCP.

Although the Service worked with the Foundation to develop the regional HCP for several listed karst invertebrates, it is also expected to benefit the Georgetown salamander by lessening the potential for water quality degradation within the spring systems it inhabits. As part of this HCP, the Foundation is looking to set aside land that is beneficial to karst invertebrate species. Some of these lands are in areas that will also provide water quality benefits for the Georgetown salamander. For example, the Foundation has purchased an easement on the 64.4-ac (26.1-ha) Lyda tract (Cobbs Cavern) in Williamson County through the section 6 grant program. This section 6 grant was awarded for the protection of listed karst invertebrate species; however, protecting this land also benefited the Georgetown salamander. Although the spring where salamanders are located was not included in the easement, a portion of the contributing watershed for this spring was included. For this reason, some water quality benefits to the salamander are expected. In January 2008, the Foundation also purchased the 145-ac (59-ha) Twin Springs preserve area. This tract is one of the sites known to be occupied by Georgetown salamanders.

Despite the conservation efforts of the Foundation, the Georgetown salamander faces ongoing threats due to the lack of habitat protection outside of these preserves. This species is limited to 16 known localities, of which only three (Cobbs Spring, Cobbs Well, and Twin Springs) have some amount of protection by the Foundation. The population size of Georgetown salamanders at Cobbs Spring is unknown, while the population size at Twin Springs is estimated to be only 100 to 200 individuals (Pierce 2011a, p. 18). Furthermore, the watershed of Cobbs Spring is currently only partially protected by the Foundation.

The Balcones Canyonlands Preserve offers some water quality benefits to the Jollyville Plateau salamander in portions of the Bull Creek, Brushy Creek, Cypress Creek, and Long Hollow Creek drainages through preservation of open space (Service 1996a, pp. 2–28, 2–29). However, eight of the nine City of Austin monitoring sites occupied by the Jollyville Plateau salamander within the Balcones Canyonlands Preserve have experienced water quality degradation occurring upstream and outside of the preserved tracts (O'Donnell *et al.* 2006, pp. 29, 34, 37, 49; COA 1999, pp. 6–11; Travis County 2007, p. 4). Additionally, Jollyville Plateau salamanders are not a covered species under the section 10(a)(1)(B) permit under which the preserves were established (Service 1996b, pp. 1–10). Therefore, they receive no specific protections under the Balcones Canyonlands Preserve permit, such as mitigation to offset impacts from development.

The landowners of one 8,126-ac (3,288-ha) property with at least three high-quality Salado salamander sites and the landowner of another property with one Salado salamander site have shown a commitment to natural resource conservation and land stewardship practices that benefit the Salado salamander. Neither ranch owner has immediate plans to develop their land, which means that the Salado salamander is currently not faced with threats from urbanization (see discussion above under Factor A) from these lands. However, only 21 percent of the watershed is contained within the property with three Salado salamander sites, and only 3 percent of the watershed is contained within the other property with the one Salado salamander site. The remaining area of the watersheds and the recharge zone for these springs is not contained within the properties and is not protected from future development. Considering the projected growth rates expected in Bell County (from 237,974 in 2000, to 397,741 in 2040, a 67 percent increase over the 40-year period; Texas State Data Center 2009, p. 19), these Salado salamander spring sites are still at threat from the detrimental effects of urbanization. The threat of development and urbanization continues into the foreseeable future because there are no long-term, binding conservation plans in place for these properties or adequate regulations in place for the watersheds or recharge zone.

The City of Austin is implementing an HCP to avoid, minimize, and mitigate incidental take of the Barton Springs salamander resulting from the continued operation and maintenance of

Barton Springs Pool and adjacent springs (City of Austin 1998, pp. 1–53). Many of the provisions of the plan also benefit the Austin blind salamander. These provisions include: (1) Training lifeguard and maintenance staff to protect salamander habitat, (2) controlling erosion and preventing surface runoff from entering the springs, (3) ecological enhancement and restoration, (4) monthly monitoring of salamander numbers, (5) public outreach and education, and (6) establishment and maintenance of a captive breeding program, which includes the Austin blind salamander. As part of this HCP, the City of Austin completed habitat restoration of Eliza Spring and the main pool of Barton Springs in 2003 and 2004. A more natural flow regime was reconstructed in these habitats by removing large obstructions to flow.

Conclusion of Factor A

Degradation of habitat, in the form of reduced water quality and quantity and disturbance of spring sites (surface habitat), is the primary threat to the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders. Reductions in water quality occur primarily as a result of urbanization, which increases the amount of impervious cover in the watershed. Impervious cover increases storm flow velocities and increases erosion and sedimentation. Impervious cover also changes natural flow regimes within watersheds and increases the transport of contaminants common in urban environments, such as oils, metals, and pesticides.

After identifying 15 watersheds within the Watershed Boundary Dataset as being occupied by 1 of the 4 central Texas salamander species, and using the most recent National Land Cover Dataset impervious cover data available (from 2006), we could draw some generalizations about how each watershed might be affected by development. The watershed where the Austin blind salamander is known to occur has an average overall impervious cover estimate of 12 percent, but also includes some Balcones Canyonlands Preserve lands. Although this managed open space likely contributes some water quality benefits to surface flow, the habitat of this largely subterranean species can be influenced by land use throughout the recharge zone of the aquifer that supplies its spring flow.

The watersheds within the Jollyville Plateau salamander's range have average impervious cover estimates that range from approximately 6 percent to 34 percent. Although the Balcones

Canyonlands Preserve and other lands managed for open space within these watersheds likely provide some water quality benefits for this species, five out of the six watersheds that occur within its range have overall impervious cover estimates that can lead to sharp declines in water quality or cause permanent conditions of poor water quality (Schueler 1994, pp. 100–102).

The watersheds within the Georgetown salamander's range have average impervious cover estimates that range from approximately 0.59 percent to 10 percent. Five out of the six watersheds within this species' range are well below impervious cover levels that can lead to declines in water quality. With only two large tracts of land managed specifically as open space (64 ac (26 ha) and 145 ac (59 ha)) within the Georgetown salamander's range, it is likely that water quality for this species' habitat will decline into the future as impervious cover increases with development.

The two watersheds within the Salado salamander's range have average impervious cover estimates of 0.31 percent and 0.91 percent. Although four known Salado salamander sites are located on large, undeveloped ranches (8,126 ac (3,288 ha) and 827 ac (335 ha)), a significant portion of the recharge zone for the Northern Segment of the Edwards Aquifer that supplies water to this species' habitat extends to areas outside of these properties. Furthermore, we could not identify any large tracts managed specifically as open space within the Salado salamander's range. We also could not identify any agreements in place to preserve or manage any properties for the benefit of this species or its habitat. Without these, it is likely that water quality within the Salado salamander's habitat will decrease as development and impervious cover increases in these watersheds in the future.

Expanding urbanization results in an increase of contaminants, such as fertilizers and pesticides, within the watershed, which degrades water quality at salamander spring sites. Additionally, urbanization increases nutrient loads at spring sites, which can lead to decreases in dissolved oxygen levels. Construction activities are a threat to both water quality and quantity because they can increase sedimentation and dewater springs by intercepting aquifer conduits.

Various other threats exist for these species, as well. Drought, which may be compounded by the effects of global climate change, also degrades water quality and reduces available habitat for the salamanders. Water quantity can

also be reduced by groundwater pumping. Flood events contribute to the salamanders' risks of extinction by degrading water quality through increased sedimentation and contaminants levels, which may damage or alter substrates. Impoundments are also a threat for all four central Texas salamanders. Feral hogs are a threat to Georgetown, Salado, and Jollyville Plateau salamanders because they can physically alter their surface habitat. Likewise, livestock are a threat to Georgetown and Salado salamanders' surface habitat. Additionally, catastrophic spills and leaks remain a threat for many salamander locations. All of these threats are predicted to increase in the future, as the human population and development increases within watersheds that provide habitat for these salamanders. Overall, we consider the combined threats of Factor A to be ongoing and with a high degree of impact to all four central Texas salamanders and their habitats.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no available information regarding overutilization of any of the four salamander species for commercial, recreational, scientific, or educational purposes. We do not consider overutilization to be a threat to the four central Texas salamander species now or in the future.

Factor C. Disease or Predation

Chytridiomycosis (chytrid fungus) is a fungal disease that is responsible for killing amphibians worldwide (Daszak *et al.* 2000, p. 445). The chytrid fungus has been documented on the feet of Jollyville Plateau salamanders from 15 different sites and on Austin blind salamanders in the wild (O'Donnell *et al.* 2006, pp. 22–23; Chamberlain 2011, City of Austin, pers. comm.). However, the salamanders are not displaying signs of infection (O'Donnell *et al.* 2006, p. 23). We have no data to indicate whether impacts from this disease may increase or decrease in the future, and therefore, whether this disease is a significant factor affecting the species (a threat). Therefore, we do not consider chytridiomycosis to be a threat to any of the four central Texas salamanders at this time.

However, a condition affecting Barton Springs salamanders may also be a threat to the Austin blind salamander. In 2002, 19 Barton Springs salamanders, which co-occur with the Austin blind salamander, were found at Barton Springs with bubbles of gas occurring throughout their bodies (Chamberlain

and O'Donnell 2003, p. 17). Three similarly affected Barton Springs salamanders also were found in 2003 (Chamberlain, unpublished data). Of the 19 salamanders affected in 2002, 12 were found dead or died shortly after they were found. Both adult and juvenile Barton Springs salamanders have been affected (Chamberlain and O'Donnell 2003, pp. 10, 17).

The incidence of gas bubbles in salamanders at Barton Springs is consistent with a disorder known as gas bubble disease, or gas bubble trauma, as described by Weitkamp and Katz (1980, pp. 664–671). In animals with gas bubble trauma, bubbles below the surface of the body and inside the cardiovascular system produce lesions and dead tissue that can lead to secondary infections (Weitkamp and Katz 1980, p. 670). Death from gas bubble trauma is apparently related to an accumulation of internal bubbles in the cardiovascular system (Weitkamp and Katz 1980, p. 668). Pathology reports on affected animals at Barton Springs found that the symptoms were consistent with gas bubble trauma (Chamberlain 2011, pers. comm.). The cause of gas bubble trauma is unknown, but its incidence has been correlated with water temperature. Gas bubble trauma has been observed in Austin blind salamanders in captivity when exposed to water temperatures approaching 80 °F (26.7 °C) (Chamberlain 2011, pers. comm.).

We consider gas bubble trauma to be a threat with a limited impact to the Austin blind salamander now and in the future. To our knowledge, gas bubble trauma has not been observed in Jollyville Plateau, Georgetown, or Salado salamanders. However, if an increase in water temperature is a causative factor, these three species may also be at risk during droughts or other environmental stressors that result in increases in water temperature. However, at this time, we do not consider gas bubble trauma to be a threat to the Jollyville Plateau, Georgetown, or Salado salamanders.

Regarding predation, City of Austin biologists found Jollyville Plateau salamander abundances were negatively correlated with the abundance of predatory centrarchid fish (carnivorous freshwater fish belonging to the sunfish family), such as black bass (*Micropterus* spp.) and sunfish (*Lepomis* spp.) (COA 2001, p. 102). Predation of a Jollyville Plateau salamander by a centrarchid fish was observed during a May 2006 field survey (O'Donnell *et al.* 2006, p. 38). However, Bowles *et al.* (2006, pp. 117–118) rarely observed these predators in Jollyville Plateau salamander habitat.

Centrarchid fish are currently present in two of three Austin blind salamander sites (Laurie Dries, City of Austin, unpublished data), and crayfish (another predator) occupy much of the same habitat as Georgetown, Salado, and Jollyville Plateau salamanders. All four salamanders have been observed retreating into gravel substrate after cover was moved, suggesting these salamanders display anti-predation behavior (Bowles *et al.* 2006, p. 117). However, we do not have enough data to indicate whether predation of the four salamander species may increase in the future or is a significant factor affecting the species and therefore a threat. Therefore, we do not consider predation to be a threat to any of the four central Texas salamanders at this time.

In summary, while predation and disease may be affecting individuals of these salamander species, we believe that these are not significant factors affecting the species' continued existence. Neither predation nor disease is occurring at a level that we consider to be a threat to the continued existence of any of the four central Texas salamander species now or in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Water Quantity and Quality Protections

The main threats to the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders are from habitat degradation, specifically a lowering of water quality and quantity. Therefore, regulatory mechanisms that protect water from the Edwards Aquifer are crucial to the future survival of the species. These four salamander species are not listed on the Texas State List of Endangered or Threatened Species (TPWD 2011b, pp. 2–3). Therefore, these species are receiving no direct protection from the State.

Under authority of the Texas Administrative Code (Title 30, Chapter 213), the Texas Commission on Environmental Quality (TCEQ) regulates activities having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams. Among other State statutes designed to protect water quality, the Edwards Rules require a number of water quality protection measures for new development occurring in the recharge and contributing zones of the Edwards Aquifer. These regulations provide incentives to developers in the form of exemptions and exceptions from permanent water quality control mechanisms for developments with less than 20 percent impervious cover.

However, only the Georgetown salamander sites and about half of the known Jollyville Plateau salamander locations occur within those portions of the Edwards Aquifer regulated by TCEQ. Furthermore, the jurisdiction of the Edwards Rules does not extend into Bell County or the Barton Springs Segment (TCEQ 2001, p. 1). Therefore, many salamander populations do not directly benefit from these protections.

We recognize that implementation of the Edwards Rules in other areas of the Northern Segment of the Edwards Aquifer may have the potential to affect conditions at spring sites occupied by the Salado salamander. For those salamander locations that are covered by the TCEQ regulations, the regulations do not address land use, impervious cover limitations, non-point source pollution, or application of fertilizers and pesticides over the recharge zone (30 TAC 213.3). We are unaware of any water quality ordinances more restrictive than TCEQ's Edwards Rules in Bell, Williamson, or Travis Counties outside the City of Austin.

The City of Austin's water quality ordinances (City of Austin Code, Title 25, Chapter 8) provide some water quality regulatory protection to the Austin blind and Jollyville Plateau salamanders' habitat within Travis County. The ordinances range from relatively strict controls in its extraterritorial jurisdiction to lesser controls in outlying areas. Some of the protections provided in these ordinances include riparian buffers, permanent water quality control structures, wastewater system restrictions, and impervious cover limitations (Turner 2007, pp. 1–2). Some studies have demonstrated that these ordinances play a role in protecting Austin-area surface waters from urbanization-related contaminants. For example, in the period after the City of Austin passed water quality ordinances in 1986 and 1991, sedimentation and nutrients decreased in the five major Austin-area creeks (Turner 2007, p. 7). Peak storm flows were also lower after the enactment of the ordinances, which may explain the decrease in sedimentation (Turner 2007, p. 10). Likewise, a separate study on the water quality of Walnut Creek (Jollyville Plateau salamander habitat) from 1996 to 2008 found that water quality has either remained the same or improved (Scoggins 2010, p. 15). These trends in water quality occurred despite a drastic increase in construction and impervious cover during the same time period (Turner 2007, pp. 7–8; Scoggins 2010, p. 4), indicating that the ordinances are effective at mitigating some of the

impacts of development on water quality. Another study in the Austin area compared 18 sites with stormwater controls (retention ponds) in their watersheds to 20 sites without stormwater controls (Maxted and Scoggins 2004, p. 8). In sites with more than 40 percent impervious cover, more contaminant-sensitive macroinvertebrate species were found at sites with stormwater controls than at sites without controls (Maxted and Scoggins 2004, p. 11).

However, based on long-term monitoring that shows an overall water quality decline at Jollyville Plateau and Austin blind salamander sites, these local ordinances are not effective at reducing contaminant levels to the extent that they no longer threaten salamander habitat (see discussion under Factor A). Furthermore, it is unclear how much surface water quality controls in developed areas benefit groundwater quality. A City of Austin study of four Jollyville Plateau salamander spring sites within two subdivisions found that stricter water quality controls (wet ponds instead of standard sedimentation/filtration ponds) did not translate into improved groundwater quality (Herrington *et al.* 2007, pp. 13–14).

In addition, Title 7, Chapter 245 of the Texas Local Government Code permits “grandfathering” of certain local regulations. Grandfathering allows developments to be exempted from new requirements for water quality controls and impervious cover limits if the developments were planned prior to the implementation of such regulations. However, these developments are still obligated to comply with regulations that were applicable at the time when project applications for development were first filed (Title 7, Chapter 245 of the Texas Local Government Code p. 1). Unpublished data provided by the City of Austin (2007) indicates that up to 26 percent of undeveloped areas within watersheds draining to Jollyville Plateau salamander habitat may be exempted from current water quality control requirements due to “grandfathering” legislation.

On January 1, 2006, the City of Austin banned the use of coal tar sealant (Scoggins *et al.* 2009, p. 4909), which has been shown to be the main source of PAHs in Austin-area streams (Mahler *et al.* 2005, p. 5565). However, historically applied coal tar sealant lasts for several years and can remain a source of PAHs to aquatic systems (DeMott *et al.* 2010, p. 372). A study that examined PAH concentrations in Austin streams before the ban and 2 years after the ban found no difference, indicating

that either more time is needed to see the impact of the coal tar ban, or that other sources (e.g. airborne and automotive) are contributing more to PAH loadings (DeMott *et al.* 2010, pp. 375–377). Furthermore, coal tar sealant is still legal outside of the City of Austin's jurisdiction and may be contributing PAH loads to northern Jollyville Plateau, Georgetown, and Salado salamander habitat.

The TCEQ has required wastewater treatment systems within the Barton Springs Edwards Aquifer recharge and contributing zones to obtain a Texas Land Application Permit (TLAP) in order to discharge effluent onto the land (Ross 2011, p. 7). Although these permits are designed to protect the surface waters and underground aquifer, studies have demonstrated reduced water quality downstream of TLAP sites (Ross 2011, pp. 11–18). Ross (2011, pp. 18–21) attributes this regulatory inadequacy to TCEQ's failure to conduct regular soil monitoring for nutrient accumulation on TLAP sites, and the failure to conduct indepth reviews of TLAP applications.

The TCEQ has developed voluntary water quality protection measures for developers to minimize water quality effects to springs systems and other aquatic habitats within the Edwards Aquifer region of Texas (TCEQ 2005, p. i). In February 2005, the Service concurred that these measures, if implemented, would protect several aquatic species from take, including the Georgetown salamander, due to water quality degradation resulting from development in the Edwards Aquifer region (TCEQ 2007, p. 1). However, it should be noted that as non-listed species, "take" prohibitions do not apply. Thus, these water quality protection measures are not a regulatory mechanism.

The Barton Springs Edwards Aquifer Conservation District permits and regulates most wells on the Barton Springs segment of the Edwards Aquifer, subject to the limits of the State law. Bell County's groundwater resources are currently managed by the Clearwater Underground Water Conservation District. There are no groundwater conservation districts in Williamson or northern Travis Counties, so groundwater pumping is unregulated in these areas (TPWD 2011a, p. 7).

Conclusion of Factor D

Data indicate that water quality degradation in sites occupied by Austin blind and Jollyville Plateau salamanders continues to occur despite the existence of current regulatory mechanisms in place to protect water quality (Turner

2005a, pp. 8–17, O'Donnell *et al.* 2006, p. 29). Long-term water quality data are not available for Georgetown and Salado salamander sites, but rapid human population growth and urbanization in Williamson and Bell Counties continues. Existing regulations in these counties do not address many of the sources of groundwater pollution that are typically associated with urbanized areas. Therefore, we consider the inadequacy of existing regulatory mechanisms to be an ongoing, significant threat to all four salamander species now and in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Ultraviolet Radiation

Increased levels of ultraviolet-B (UV-B) radiation, due to depletion of the stratospheric ozone layers, may lead to declines in amphibian populations (Blaustein and Kiesecker 2002, pp. 598–600). For example, research has demonstrated that UV-B radiation causes significant mortality and deformities in developing long-toed salamanders (*Ambystoma macrodactylum*) (Blaustein *et al.* 1997, p. 13,735). Exposure to UV-B radiation reduces growth in clawed frogs (*Xenopus laevis*) (Hatch and Burton, 1998, p. 1,783) and lowers hatching success in Cascades frogs (*Rana cascadae*) and western toads (*Bufo boreas*) (Kiesecker and Blaustein 1995, pp. 11,050–11,051). In lab experiments with spotted salamanders, UV-B radiation diminished their swimming ability (Bommarito *et al.* 2010, p. 1151). Additionally, UV-B radiation may act synergistically (the total effect is greater than the sum of the individual effects) with other factors (for example, contaminants, pH, pathogens) to cause declines in amphibians (Alford and Richards 1999, p. 141; see *Synergistic and Additive Interactions among Stressors*). Some researchers believe that future increases in UV-B radiation will have significant detrimental impacts on amphibians that are sensitive to this radiation (Blaustein and Belden 2003, p. 95).

The effect of increased UV-B radiation on the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders is unknown. These species may be protected from UV-B radiation through shading from trees at some spring sites. Removal of natural riparian vegetation may put these species at risk. Because eggs are believed to be deposited underground (Bendik 2011b, pers. comm.), UV-B radiation may have

no impact on the hatching success of these species. In conclusion, the effect of increased UV-B radiation has the potential to cause deformities or developmental problems to individuals, but we do not consider this stressor to significantly contribute to the risk of extinction of any of the four central Texas salamander species at this time.

Deformities in Jollyville Plateau Salamanders

Jollyville Plateau salamanders observed at the Stillhouse Hollow monitoring sites have shown high incidences of deformities, such as curved spines, missing eyes, missing limbs or digits, and eye injuries (O'Donnell *et al.* 2006, p. 26). The Stillhouse Hollow location was also cited as having the highest observation of dead Jollyville Plateau salamanders (COA 2001, p. 88). Although water quality is relatively low in the Stillhouse Hollow drainage (O'Donnell *et al.* 2006, pp. 26, 37), no statistical correlations were found between the number of deformities and nitrate concentrations (O'Donnell *et al.* 2006, p. 26). Environmental toxins are the suspected cause of salamander deformities (O'Donnell *et al.* 2006, p. 25; COA 2001, pp. 70–74), but deformities in amphibians can also be the result of genetic mutations, parasitic infections, UV-B radiation, or the lack of an essential nutrient. More research is needed to elucidate the cause of these deformities. We consider deformities to be a stressor of low level impact to the Jollyville Plateau salamander because this stressor is only an issue at one site and it does not appear to be an issue for the other salamander species.

Small Population Size and Stochastic Events

All four central Texas salamanders may be more susceptible to threats and impacts from stochastic events because of their small population sizes. The risk of extinction for any species is known to be highly indirectly correlated with population size (Ogrady *et al.* 2004, pp. 516, 518; Pimm *et al.* 1988, pp. 774–775). In other words, the smaller the population, the greater the overall risk of extinction. True population size estimates have not been generated at most sites for these species, but mark-recapture studies at some of the highest quality sites for Georgetown and Jollyville Plateau salamanders estimated populations as low as 78 (O'Donnell *et al.* 2008, pp. 44–45). Populations are likely smaller at lower quality sites. Small population sizes can also act synergistically with other traits (such as being a habitat specialist and having

limited distribution, as is the case with the four salamander species) to greatly increase risk of extinction (Davies *et al.* 2004, p. 270). Stochastic events from either environmental factors (random events such as severe weather) or demographic factors (random causes of births and deaths of individuals) may also heighten other threats to the salamanders because of the limited range and small population sizes (Melbourne and Hastings 2008, p. 100).

The highly restricted ranges of the salamanders and entirely aquatic environment make them extremely vulnerable to threats such as decreases in water quality and quantity. This is especially true for the Austin blind salamander, which is found in only one locality comprised of three hydrologically connected springs of Barton Springs, and the Salado salamander, which has only been found at seven spring sites. Due to their very limited distribution, the Austin blind and Salado salamanders are especially sensitive to incidences such as storm events, which can dramatically affect dissolved oxygen levels and increase contaminants, and cause catastrophic spills and leaks. One catastrophic spill event in Barton Springs could potentially cause the extinction of the Austin blind salamander in the wild.

The presence of several populations of Jollyville Plateau and Georgetown salamanders does provide some possibility for natural recolonization for these species if any of these factors resulted in a local extirpation event (Fagan *et al.* 2002, p. 3,255). In conclusion, we do not consider small population size to be a threat in and of itself to any of the four salamander species, but their small population sizes may make them more vulnerable to extinction from other existing or potential threats, such as a major stochastic event. Therefore, the magnitude of a stochastic event affecting the continued existence of the Jollyville Plateau and Georgetown salamanders is moderate because these species have more populations over a broader range. On the other hand, recolonization following a stochastic event is less likely for Austin blind and Salado salamanders due to a fewer number of known sites. Therefore, the impacts from a stochastic event for the Austin blind and Salado salamanders is a significant threat.

Synergistic and Additive Interactions Among Stressors

The interactions among multiple stressors (for example, contaminants, UV-B radiation, pathogens) may be contributing to amphibian population declines (Blaustein and Kiesecker 2002, p. 598). Multiple stressors may act additively or synergistically to have greater detrimental impacts on amphibians compared to a single stressor alone. Kiesecker and Blaustein (1995, p. 11,051) found a synergistic effect between UV-B radiation and a pathogen in Cascades frogs and western toads. Researchers demonstrated that reduced pH levels and increased levels of UV-B radiation independently had no effect on leopard frog (*Rana pipiens*) larvae; however, when combined, these two caused significant mortality (Long *et al.* 1995, p. 1,302). Additionally, researchers demonstrated that UV-B radiation increases the toxicity of PAHs, which can cause mortality and deformities on developing amphibians (Hatch and Burton 199, pp. 1,780–1,783). Beattie *et al.* (1992, p. 566) demonstrated that aluminum becomes toxic to amphibians at low pH levels. Also, disease outbreaks may occur only when there are contaminants or other stressors in the environment that reduce immunity (Alford and Richards 1999, p. 141). For example, Christin *et al.* (2003, pp. 1,129–1,130, 1,132) demonstrated that mixtures of pesticides reduced the immunity to parasitic infections in leopard frogs.

The effect of synergistic effects between stressors on the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders is not currently known. Furthermore, different species of amphibians differ in their reactions to stressors and combinations of stressors (Kiesecker and Blaustein 1995, p. 11,051; Relyea *et al.* 2009, pp. 367–368; Rohr *et al.* 2003, pp. 2,387–2,390). Studies that examine the effects of interactions among multiple stressors on the four central Texas salamanders are lacking. However, based on the number of examples in other amphibians, the possibility of synergistic effects on the four central Texas salamanders cannot be discounted.

Summary of Factor E

The effect of increased UV-B radiation is an unstudied stressor to the four central Texas salamanders that has

the potential to cause deformities or development problems. The effect of this stressor is believed to be low at this time.

Deformities have been documented in one of the four salamander species (Jollyville Plateau salamander), and at only one location (Stillhouse Hollow). We do not know what causes these deformities, and there is no evidence that the incidence rate is increasing or spreading. Therefore, the effect of this stressor is believed to be low.

Small population sizes at most of the sites for the salamanders is not a threat in and of itself, but it may increase the risk of local extirpation events. However, the Georgetown and Jollyville Plateau salamanders may have some ability to recolonize sites because they occur in more populations over a broader range. Thus, we consider the level of impacts from a stochastic event to be moderate for these two species and high for the Austin blind and Salado salamanders due to their more limited distributions.

Finally, the significance of each threat discussed above (under Factors A through E) may be influenced by their interactions with other threats, and may subsequently increase under certain conditions.

Overall Threat Summary

The following table provides a general overview of the type, anticipated level of impact, and timing of threats facing the four salamanders proposed for listing. It is intended to assist the public in comparing the threats discussed above among the salamander species. The magnitude of threat is defined in terms of scope (the relative proportion or range of the species that is affected by the threat) and severity (impacts on the overall species' status), such that a high magnitude of threat indicates that the species is facing the greatest threats to their continued existence (48 FR 43098; September 21, 1983). We define imminence as the timing of when a threat begins. A threat is considered imminent if it is impacting the species now rather than in the foreseeable future. Some of the threats outlined within Tables 3 through 6 are difficult to fully quantify due to lack of available information. These threats were designated an unknown magnitude.

TABLE 3—SUMMARY OF THREATS TO THE AUSTIN BLIND SALAMANDER

Factor	Type of threat	Level of impact (low, medium, high)	Ongoing?
A	Contaminants from stormwater runoff	High	Yes.

TABLE 3—SUMMARY OF THREATS TO THE AUSTIN BLIND SALAMANDER—Continued

Factor	Type of threat	Level of impact (low, medium, high)	Ongoing?
	Sedimentation from stormwater runoff	High	Yes.
	Changes in flow regime from impervious cover	Med	Yes.
	Excess nutrient input	Low	Yes.
	Pesticides	Low	Yes.
	Catastrophic hazardous material spills	High	Yes.
	Pollution from construction activities	Med	Yes.
	Construction of pipelines	Low	No.
	Groundwater pumping	Med	Yes.
	Impoundments	High	Yes.
	Physical modification of surface habitat for human-related activities	Med	Yes.
	Drought	Low	Yes.
	Flooding	Low	Yes.
	Climate change	Unknown	Yes.
C	Gas bubble trauma	Low	No.
D	Inadequacy of existing regulatory mechanisms	High	Yes.
E	Small population size and stochastic events	High	Yes.
	Synergistic and additive interactions among stressors	Unknown	Unknown.
	UV-B radiation	Unknown	Unknown.

TABLE 4—SUMMARY OF THREATS TO THE JOLLYVILLE PLATEAU SALAMANDER

Factor	Type of threat	Level of impact (low, medium, high)	Ongoing?
A	Contaminants from stormwater runoff	High	Yes.
	Sedimentation from stormwater runoff	High	Yes.
	Changes in flow regime from impervious cover	Med	Yes.
	Excess nutrient input	MedLow	Yes.
	Pesticides	Low	Yes.
	Catastrophic hazardous material spills	Low	Yes.
	Pollution from construction activities	HighMed	Yes.
	Construction of pipelines	Low	No.
	Construction of the Jollyville Transmission Main	Low	Yes.
	Rock quarries	Low	Yes.
	Groundwater pumping	Med	Yes.
	Impoundments	Low	Yes.
	Feral hogs	Low	Yes.
	Physical modification of surface habitat for human-related activities	Low	Yes.
	Drought	MedLow	Yes.
	Flooding	Low	Yes.
	Climate change	Unknown	Yes.
D	Inadequacy of existing regulatory mechanisms	High	Yes.
E	Small population size and stochastic events	Med	Yes.
	Synergistic and additive interactions among stressors	Unknown	Unknown.
	UV-B radiation	Unknown	Unknown.

TABLE 5—SUMMARY OF THREATS TO THE GEORGETOWN SALAMANDER

Factor	Type of threat	Level of impact (low, medium, high)	Ongoing?
A	Contaminants from stormwater runoff	High	Yes.
	Sedimentation from stormwater runoff	High	Yes.
	Changes in flow regime from impervious cover	Med	Yes.
	Excess nutrient input	Low	Yes.
	Pesticides	Low	Yes.
	Catastrophic hazardous material spills	Med	Yes.
	Pollution from construction activities	Med	Yes.
	Construction of pipelines	Low	No.
	Rock quarries	Low	Yes.
	Groundwater pumping	Med	Yes.
	Impoundments	Low	Yes.
	Feral hogs	Low	Yes.
	Livestock	Low	Yes.
	Physical modification of surface habitat for human-related activities	Low	Yes.
	Drought	MedLow	Yes.
	Flooding	Low	Yes.
	Climate change	Unknown	Yes.
D	Inadequacy of existing regulatory mechanisms	High	Yes.

TABLE 5—SUMMARY OF THREATS TO THE GEORGETOWN SALAMANDER—Continued

Factor	Type of threat	Level of impact (low, medium, high)	Ongoing?
E	Small population size and stochastic events	Med	Yes.
	Synergistic and additive interactions among stressors	Unknown	Unknown.
	UV-B radiation	Unknown	Unknown.

TABLE 6—SUMMARY OF THREATS TO THE SALADO SALAMANDER

Factor	Type of threat	Level of impact (low, medium, high)	Ongoing?
A	Contaminants from stormwater runoff	Med	Yes.
	Sedimentation from stormwater runoff	Med	Yes.
	Changes in flow regime from impervious cover	Low	Yes.
	Excess nutrient input	Low	Yes.
	Pesticides	Low	Yes.
	Catastrophic hazardous material spills	High	Yes.
	Pollution from construction activities	Low	Yes.
	Construction of pipelines	Low	No.
	Rock quarries	Low	Yes.
	Groundwater pumping	Med	Yes.
	Impoundments	Low	Yes.
	Feral hogs	Low	Yes.
	Livestock	Low	Yes.
	Physical modification of surface habitat for human-related activities	Low	Yes.
	Drought	Low	Yes.
D	Flooding	Low	Yes.
	Climate change	Unknown	Yes.
E	Inadequacy of existing regulatory mechanisms	High	Yes.
	Small population size and stochastic events	High	Yes.
E	Synergistic and additive interactions among stressors	High	Yes.
	UV-B radiation	Unknown	Unknown.

Proposed Listing Determination

As previously noted, the magnitude of a threat is defined in terms of scope (the relative proportion or range of the species that is affected by the threat) and severity (impacts on the overall species' status), such that a high magnitude of threat indicates that the species is facing the greatest threats to their continued existence (48 FR 43098; September 21, 1983). We define imminence as the timing of when a threat begins. A threat is considered imminent if it is impacting the species now rather than in the foreseeable future.

Austin Blind Salamander

The primary threat to this species is habitat modification (Factor A) in the form of reduced flows and degradation of water quality of spring habitats as a result of urbanization within the watersheds and recharge and contributing zones of the Edwards Aquifer. Substantial human population growth (a projected increase of 84 percent from 2000 to 2040) is ongoing within Travis County, Texas (Texas State Data Center 2008, p. 1), the only location where the Austin blind salamander is known to occur. This human population growth is likely to

result in considerable urbanization within the watershed, which would influence spring flow and water quality within the salamander's three known sites at Barton Springs. Urbanization leads to increases in sedimentation, contaminants, and nutrient loads as well as decreases in aquatic invertebrates (the salamander's prey base). Significant changes in water quality constituents have been reported from analyses conducted from within the Austin blind salamander's habitat at Barton Springs Pool (COA 1997, pp. 229, 231–232; Mahler and Van Metre 2000, p. 1); these changes have been attributed to urbanization within the recharge and contributing zones of the Edwards Aquifer (Turner 2005a, p. 6).

We analyzed the impervious cover estimates of the watershed within the Austin blind salamander's range, along with the amount of land currently managed as open space that could possibly contribute water quality benefits to the salamander's habitats. The watershed where the Austin blind salamander is known to occur has an average overall impervious cover estimate of 11.58 percent, which is within the range in which sharp declines of water quality in aquatic habitats have been observed (Schueler

1994, pp. 100–102). Although this watershed has some managed open space that likely contributes water quality benefits to surface flow, the habitat of this largely subterranean species can be influenced by land use throughout the recharge zone of the aquifer that supplies its spring flow. In consideration of this information and analysis, we believe the threat of habitat modification in the form of reduced water quality is ongoing and has a high level of impact throughout the Austin blind salamander's range.

Data indicate that water quality degradation in sites occupied by Austin blind salamanders continues to occur despite the existence of current regulatory mechanisms in place designed to protect water quality (Turner 2005a, pp. 8–17, O'Donnell *et al.* 2006, p. 29). Therefore, we consider the inadequacy of existing regulatory mechanisms to protect against water quality degradation (Factor D) to be a significant threat.

The Edwards Aquifer is at risk from a variety of sources of pollutants (Ross 2011, p. 4), including hazardous materials that could be spilled or leaked, potentially resulting in the contamination of both surface and groundwater resources (Service 2005, pp. 1.6–14–1.6–15). A catastrophic spill

could occur if a truck transporting hazardous materials overturned and spilled its contents over the recharge zone of the aquifer. The Austin blind salamander is at considerable risk from hazardous materials spills given that it only occurs at three spring sites in one locality (Barton Springs). Among other sources, there is the potential for a catastrophic gasoline spill in the Barton Springs Segment of the Edwards Aquifer from the Longhorn pipeline (EPA 2000, pp. 9–29–9–30). There is also potential for hazardous material spills from the multiple drinking water lines and sewage pipelines surrounding Barton Springs. For these reasons, we believe the threat of habitat modification in the form of water quality degradation and contamination from hazardous materials spills to be an ongoing threat of high impact to this species.

Construction activities resulting from urban development are a threat to both water quality and quantity because they can increase sedimentation and dewater springs by intercepting aquifer conduits. Austin blind salamander habitat at Barton Springs is under the threat of pollutant loading due to its proximity to construction activities and its location at the downstream side of the watershed (COA 1997, p. 237). Given that construction-related sediment loading is already occurring within the Austin blind salamander's narrowly restricted range, we believe the threat of habitat modification in the form of water quality degradation and changes to water flows caused by construction activities from urban development to be an ongoing threat of medium impact to this species.

Another potential threat to the Austin blind salamander and its habitat is low flow conditions in the aquifer and at Barton Springs. Groundwater pumping can cause such conditions and lead to saline water encroachments in the aquifer. Water quality in the Barton Springs Segment of the Edwards Aquifer has been degraded in the past due to saline encroachment (Slade *et al.* 1986, p. 62). This water quality degradation occurred when Barton Springs discharge was less than 30 cfs (Slade *et al.* 1986, p. 64). Reduced groundwater levels could also increase the concentration of some pollutants in the aquifer. Average flows at Barton Springs have dropped below 17 cfs as recently as mid-November 2011 (Barton Springs/Edwards Aquifer Conservation District 2011, p. 1). This saline water encroachment would threaten the freshwater biota in the springs and the aquifer, including the Austin blind salamander, by dramatically changing

the water chemistry (such as increasing conductivity).

In addition to groundwater pumping, low flows in Barton Springs may be attributed to ongoing urbanization and recent drought conditions. Future climate change could also affect water quantity and spring flow for the Austin blind salamander. Climate change could compound the threat of decreased water quantity at salamander spring sites. The effects of climate change on aquifer-dependant species is difficult to assess; however, the Edwards Aquifer is predicted to experience additional stress from climate change that could lead to decreased recharge and low or ceased spring flows given increasing pumping demands (Loaiciga *et al.* 2000, pp. 192–193). In any case, we believe habitat modification in the form of water quantity reduction, whether reduced spring flows are caused by climate change or are in combination with other stressors, to be an ongoing threat of high impact to this species.

The Austin blind salamander is sensitive to direct physical habitat modification, such as modification resulting from human recreational activities and impoundments. Eliza Spring and Sunken Garden Spring, two of the three locations of the Austin blind salamander, also experience vandalism, despite the presence of fencing and signage (Dries 2011, pers. comm.). The deep water of Barton Springs likely protects the Austin blind salamander's surface habitat from damage from frequent human recreation.

All spring sites for the Austin blind salamander (Main, Eliza, and Sunken Garden springs) have been impounded for recreational use. While the manmade structures help retain water in the spring pools during low flows, they have altered the salamander's natural environment. The impoundments have changed the Barton Springs ecosystem from a stream-like system to a more lentic (still water) environment, thereby reducing the water system's ability to flush sediments downstream and out of salamander habitat. Because of the physical habitat modifications that have permanently impacted the Austin blind salamander's habitat or are currently ongoing, we consider this threat to be ongoing and of high impact to this species.

Gas bubble trauma has been observed in Austin blind salamanders in captivity (Chamberlain 2011, pers. comm.), and has been known to affect another salamander species (the Barton Springs salamander) at Barton Springs (Chamberlain 2011, pers. comm.). Chytrid fungus has also been documented on the feet of Austin blind

salamanders in the wild (O'Donnell *et al.* 2006, pp. 22–23). However, we have no data to indicate whether disease or predation (Factor C) of any of the salamander species proposed for listing is a significant threat facing the species. Predation and disease may be affecting these salamander species, but there is not enough evidence to consider these factors threats. Neither factor is at a level that we consider to be threatening the continued existence of the salamander species now or in the foreseeable future.

Other natural or manmade factors (Factor E) affecting the Austin blind salamander include UV-B radiation, small population sizes, stochastic events, and synergistic and additive interactions among stressors. Increased levels of UV-B radiation, due to the depletion of stratospheric ozone layers has been shown to cause significant mortality and deformities in amphibian species (Blaustein *et al.* 1997, p. 13,735), although the effects of UV-B radiation on this species are unknown. Small population sizes may act synergistically with other traits of the species (such as its limited distribution) to increase its overall risk of extinction (Davies *et al.* 2004, p. 270). Stochastic events, such as severe weather or demographic changes to the population, are also heightened threats because of its restricted range and small population sizes (Melbourne and Hastings 2008, p. 100). We therefore consider this to be an ongoing threat of high impact.

The population status of Austin blind salamanders is unknown, largely because it is rarely seen at the water's surface (Hillis *et al.* 2001, p. 267). However, observations of Austin blind salamanders have been decreasing in recent years (2009–2010) (COA 2011a, pp. 51–52). From January 1998 to December 2000, there were only 17 documented observations of the Austin blind salamander (Hillis *et al.* 2001, p. 273). The abundance of Austin blind salamanders increased slightly from 2002 to 2006, but fewer observations have been made in more recent years (2009 to 2010) (COA 2011a, pp. 51–52). Because fewer observations coincide with habitat degradation throughout the species' entire range, we expect the downward trend to continue into the future as human population growth and urbanization drive further declines in habitat quality and quantity. Due to its small range and probable small population size, we believe the species resiliency to the threats outlined above is low.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a

significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.” Due to small population size, limited range, and susceptibility to ongoing threats, we determine that the Austin blind salamander is currently on the brink of extinction and therefore meets the definition of endangered. We find that the Austin blind salamander is presently in danger of extinction throughout its entire range based on the immediacy, severity, and scope of the threats described above. The Austin blind salamander species is proposed as endangered, rather than threatened, because the threats are occurring now, and their impacts to the species and its habitat would be catastrophic given the very limited range of the species, making the salamander at risk of extinction at the present time. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Austin blind salamander as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Austin blind salamander proposed for listing in this rule is highly restricted in its range, and the threats occur throughout its entire range. Therefore, the threats to the survival of this species are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the species throughout its entire range.

Jollyville Plateau Salamander

The primary threat to this species is habitat modification (Factor A) in the form of reduced flows and degradation of water quality of spring habitats as a result of human population growth and subsequent urbanization within the watersheds and recharge and contributing zones of the Edwards Aquifer. Substantial human population growth is ongoing within this species’ range. The Texas State Data Center (2008, p. 1) has reported a population increase of 84 percent and 597 percent for Travis and Williamson Counties, Texas, respectively. This population growth is likely to result in considerable urbanization within the watersheds that contribute to spring flow and thereby influence water quality within the salamander’s habitat. Urbanization leads to increases in water demand and reduced water quality from erosion, sedimentation, contaminants, and

nutrient loads as well as decreases in aquatic invertebrates (the salamanders’ prey base). Specifically, elevated PAH and conductivity levels as well as excessive sedimentation have been documented within Jollyville Plateau salamander habitat and have been associated with population declines observed during monitoring (COA 2001, pp. 101, 126; O’Donnell *et al.* 2006, pp. 37, 47). Poor water quality, particularly elevated nitrates, is also believed to be a cause of morphological deformities observed in individual Jollyville Plateau salamanders (O’Donnell *et al.* 2006, pp. 26, 37).

We analyzed the impervious cover estimates of each watershed within the Jollyville Plateau salamander’s range, along with the amount of land currently managed as open space that could possibly contribute water quality benefits to the salamander’s habitats. The watersheds within the Jollyville Plateau salamander’s range have average impervious cover estimates that range from 5.72 percent to 34.32 percent. Although the Balcones Canyonlands Preserve and other lands managed for open space within these watersheds likely provide some water quality benefits for this species, five out of the six watersheds that occur within its range have overall impervious cover estimates that can lead to sharp declines in water quality or cause permanent conditions of poor water quality (Schueler 1994, pp. 100–102). In consideration of this information and analysis, we believe the threat of habitat modification in the form of reduced water quality is ongoing and of high impact throughout the Jollyville Plateau salamander’s range.

Data indicate that water quality degradation in sites occupied by Jollyville Plateau salamanders continues to occur despite the existence of current regulatory mechanisms in place to protect water quality (Turner 2005a, pp. 8–17, O’Donnell *et al.* 2006, p. 29); therefore, these mechanisms are not adequate to protect this species and its habitat. Therefore, we consider the inadequacy of existing regulatory mechanisms (Factor D) to be an ongoing threat of high impact.

The Edwards Aquifer is at risk from a variety of sources of pollutants (Ross 2011, p. 4), including hazardous materials that could be spilled or leaked, potentially resulting in the contamination of both surface and groundwater resources (Service 2005, pp. 1.6–14–1.6–15). A catastrophic spill could occur if a truck transporting hazardous materials overturned and spilled its contents over the recharge zone of the aquifer. The transport of

hazardous materials is common on many highways that serve as major transportation routes (Service 2005, p. 1.6–13).

A number of point-sources of pollutants exist within the Jollyville Plateau salamander’s range, including leaking underground storage tanks and sewage spills from pipelines (COA 2001, pp. 16, 21, 74). A significant hazardous materials spill within a stream drainage for the Jollyville Plateau salamander could have the potential to threaten the long-term survival and sustainability of multiple populations. Because of these reasons, we believe the threat of habitat modification in the form of water quality degradation and contamination from hazardous materials spills to be an ongoing threat of low impact to this species.

Construction activities resulting from urban development are a threat to both water quality and quantity because they can increase sedimentation and dewater springs by intercepting aquifer conduits. Increased sedimentation from construction activities has been linked to declines in Jollyville Plateau salamander counts at multiple sites (Turner 2003, p. 24; O’Donnell *et al.* 2006, p. 34). Given that construction-related sediment loading is likely to occur from ongoing urbanization within the Jollyville Plateau salamander’s range, we believe the threat of habitat modification in the form of water quality degradation and water reduction caused by construction activities from urban development to be an ongoing threat of high impact to this species.

Another potential threat to the Jollyville Plateau salamander and its habitat is low flow conditions in the aquifer and within this species’ surface habitat due to urbanization and recent drought conditions. The City of Austin found a negative correlation between urbanization and spring flows at Jollyville Plateau salamander sites (Turner 2003, p. 11). Field studies have also shown that a number of springs that support Jollyville Plateau salamanders have already gone dry periodically, and that spring waters resurface following rain events (O’Donnell *et al.* 2006, pp. 46–47).

Future climate change could also affect water quantity and spring flow for the Jollyville Plateau salamander. Climate change could compound the threat of decreased water quantity at salamander spring sites. The effects of climate change on aquifer-dependant species is difficult to assess; however, the Edwards Aquifer is predicted to experience additional stress from climate change that could lead to decreased recharge and low or ceased

spring flows given increasing pumping demands (Loaiciga *et al.* 2000, pp. 192–193). Therefore, we believe habitat modification in the form of water quantity reduction, whether reduced spring flows is caused by climate change or in combination with other stressors, to be an ongoing threat of unknown impact to this species.

All four salamanders are sensitive to direct physical habitat modification, such as those resulting from human recreational activities, impoundments, feral hogs, and livestock. Destruction of Jollyville Plateau salamander habitat has been attributed to vandalism (COA 2001, p. 21), human recreational use (COA 2001, p. 21), impoundments (O'Donnell *et al.* 2008, p.1; Bendik 2011b, pers. comm.), and feral hog activity (O'Donnell *et al.* 2006, pp. 34, 46). Because there is ongoing physical habitat modification occurring to known Jollyville Plateau salamander sites, we consider this threat to be ongoing and of low impact to this species.

Chytrid fungus has also been documented on the feet of Jollyville Plateau salamanders in the wild, but with no visible symptoms of the disease (O'Donnell *et al.* 2006, pp. 22–23). Furthermore, there are no data to indicate whether disease or predation of any of the salamander species proposed for listing is a significant threat facing these species. Predation and disease (Factor C) may be affecting the Jollyville Plateau salamander species, but there is not enough evidence to consider these factors threats. Neither factor is at a level that we consider to be threatening the continued existence of the Jollyville Plateau salamander now or in the foreseeable future.

Other natural or manmade factors (Factor E) affecting the Jollyville Plateau salamander include UV-B radiation, small population sizes, stochastic events, and synergistic and additive interactions among stressors. Increased levels of UV-B radiation, due to the depletion of stratospheric ozone layers has been shown to cause significant mortality and deformities that affect reproduction in amphibian species (Blaustein *et al.* 1997, p. 13,735), although the effects of UV-B radiation on this species are unknown. Small population sizes may act synergistically with other traits of the species (such as its limited distribution) to increase its overall risk of extinction (Davies *et al.* 2004, p. 270). Stochastic events, such as severe weather or demographic changes to the population, are also heightened threats because of the species' restricted range and small population sizes (Melbourne and Hastings 2008, p. 100).

We therefore consider this to be an ongoing threat of medium impact.

The population status of Jollyville Plateau salamanders is unknown at most of their sites. However, observations of Jollyville Plateau salamanders at several long-term monitoring sites have been decreasing in correspondence with habitat degradation (O'Donnell *et al.* 2006, pp. 4, 48). We expect the downward trend to continue into the future as human population growth and urbanization drive further declines in habitat quality and quantity.

The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.” Due to its susceptibility to threats that are ongoing throughout its entire range, we determine that the Jollyville Plateau salamander is currently on the brink of extinction and therefore meets the definition of endangered. We find that the Jollyville Plateau salamander is presently in danger of extinction throughout its entire range based on the immediacy, severity, and scope of the threats described above. The Jollyville Plateau salamander species is proposed as endangered, rather than threatened, because the threats are occurring now or are imminent, and their potential impacts to the species would be catastrophic given the very limited range of the species, making the salamander at risk of extinction at the present time. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Jollyville Plateau salamander as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Jollyville Plateau salamander proposed for listing in this rule is highly restricted in its range, and the threats occur throughout its entire range. Therefore, the threats to the survival of this species are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the species throughout its entire range.

Georgetown Salamander

The primary threat to this species is habitat modification (Factor A) in the form of reduced flows and degradation of water quality of spring habitats as a result of urbanization within the

watersheds and recharge and contributing zones of the Edwards Aquifer. Williamson County, Texas, is experiencing tremendous human population growth. An increase of 597 percent from 2000 to 2040 is currently projected (Texas State Data Center 2008, p.1). Along with human population growth, we expect more urbanization, which leads to increases in sedimentation, contaminants, and nutrient loads as well as decreases in aquatic invertebrates (the salamanders' prey base).

We analyzed the impervious cover estimates of each watershed within the Georgetown salamander's range, along with the amount of land currently managed as open space that could possibly contribute water quality benefits to the salamander's habitat. The watersheds within the Georgetown salamander's range have average impervious cover estimates that range from 0.59 percent to 9.60 percent. Five out of the six watersheds within this species' range are well below impervious cover levels that can lead to declines in water quality.

Although our analyses indicated relatively low levels of impervious cover throughout the watersheds within the Georgetown salamander's range, there are developed areas that could be affecting the water quality at sites known to be occupied by the Georgetown salamander. Moreover, existing regulations in Williamson County do not address many of the sources of groundwater pollution that are typically associated with urbanized areas; therefore, these regulations are not adequate to protect this species and its habitat. With only two large tracts (64 ac [25.9 ha] and 145 ac [58.7 ha]) protected as open space within the Georgetown salamander's range, it is unlikely the water quality for this species' habitat will be protected as development continues into the foreseeable future. In consideration of this information and analysis, we believe the threat of habitat modification in the form of reduced water quality is ongoing and of high impact throughout the Georgetown salamander's range.

In regards to regulatory mechanisms to protect water quality, it is unlikely that water quality within the Georgetown salamander's habitat will be maintained or protected as urbanization occurs in these watersheds into the foreseeable future. Therefore, we consider the inadequacy of existing regulatory mechanisms (Factor D) to be an ongoing threat of high impact.

The Edwards Aquifer is at risk from a variety of sources of pollutants (Ross

2011, p. 4), including hazardous materials that could be spilled or leaked, potentially resulting in the contamination of both surface and groundwater resources (Service 2005, pp. 1.6–14–1.6–15). A catastrophic spill could occur if a truck transporting hazardous materials overturned and spilled its contents over the recharge zone of the aquifer. Interstate Highway 35 crosses watersheds that contribute groundwater to spring sites known to be occupied by the Georgetown salamander.

The Georgetown salamander is also at risk from several other point sources of pollutants, including wastewater pipelines, chlorinated drinking water lines, and septic systems. A significant hazardous materials spill within a stream drainage for the Georgetown salamander could have the potential to threaten the long-term survival and sustainability of multiple populations. For these reasons, we believe the threat of habitat modification in the form of water quality degradation and contamination from hazardous materials spills to be an ongoing threat of medium impact to this species.

Construction activities resulting from urban development are a threat to both water quality and quantity because they can increase sedimentation and dewater springs by intercepting aquifer conduits. There are currently three active rock quarries located near Georgetown salamander sites within Williamson County, Texas, which may impact the species and its habitat, which could result in the destruction of spring sites, collapse of karst caverns, degradation of water quality, and reduction of water quantity (Ekmekci 1990, p. 4). Given that construction-related sediment loading is likely to occur within the rapidly developing range of the Georgetown salamander, we believe the threat of habitat modification in the form of water quality degradation and water reduction caused by construction activities from urban development to be an ongoing threat of medium impact to this species.

Another potential threat to the Georgetown salamander and its habitat is low flow conditions in the aquifer and within this species' surface habitat due to urbanization and recent drought conditions. The San Gabriel Springs (Georgetown salamander habitat) are now only intermittently flowing in the summer due to pumping from nearby water wells (TPWD 2011a, p. 9). Salamanders have not been seen on the surface there since 1991 (Chippindale *et al.* 2000, p. 40; Pierce 2011b, pers. comm.). Although *Eurycea* salamanders may spend some time below the surface

in underground aquatic habitat areas to adapt to periodic flow losses (O'Donnell *et al.* 2006, p. 47), drying spring habitats can result in stranding salamanders (TPWD 2011a, p. 5). Also, prey availability is likely low underground due to the lack of primary production (Hobbs and Culver 2009, p. 392).

Future climate change could also affect water quantity and spring flow for the Georgetown salamander. Climate change could compound the threat of decreased water quantity at salamander spring sites. The effects of climate change on aquifer-dependant species is difficult to assess; however, the Edwards Aquifer is predicted to experience additional stress from climate change that could lead to decreased recharge and low or ceased spring flows given increasing pumping demands (Loaiciga *et al.* 2000, pp. 192–193). In consideration of the information presented above, we believe habitat modification in the form of water quantity reduction to be an ongoing threat of high impact to this species.

All four salamanders are sensitive to direct physical habitat modification, such as those resulting from human recreational activities, impoundments, feral hogs, and livestock. Destruction of Georgetown salamander habitat has been attributed to direct human modification (TPWD 2011a, p. 9), feral hog activity (O'Donnell *et al.* 2006, pp. 34, 46; Booker 2011, p. 1), and livestock activity (White 2011, SWCA, pers. comm.). Because there is ongoing physical habitat modification occurring to known Georgetown salamander sites within a restricted range, we consider this to be an ongoing threat of low impact for this species.

Predation and disease (Factor C) may be affecting the Georgetown salamander, but there is not enough evidence to consider these factors threats. Neither factor is at a level that we consider to be threatening the continued existence of the Georgetown salamander species now or in the foreseeable future.

Other natural or manmade factors (Factor E) potentially affecting the Georgetown salamander include UV-B radiation, small population sizes, stochastic events, and synergistic and additive interactions among stressors. Increased levels of UV-B radiation, due to the depletion of stratospheric ozone layers has been shown to cause significant mortality and deformities in amphibian species (Blaustein *et al.* 1997, p. 13,735), although the effects of UV-B radiation on this species are unknown. Small population sizes may act synergistically with other traits of the species (such as its limited distribution) to increase its overall risk

of extinction (Davies *et al.* 2004, p. 270). Stochastic events, such as severe weather or demographic changes to the population, are also heightened threats because of its restricted range and small population sizes (Melbourne and Hastings 2008, p. 100). We therefore consider this to be an ongoing threat of medium impact.

The population status of Georgetown salamanders is unknown at all but two of their sites. A lack of long-term data prevents us from drawing conclusions on how Georgetown salamander populations may be changing over time. However, similar to Austin blind and Jollyville plateau salamander populations, we expect Georgetown salamander populations to trend downwards in the future as human population growth and urbanization in the area drive declines in habitat quality and quantity.

The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.” Due to its susceptibility to threats that are ongoing throughout its entire range, we determine that the Georgetown salamander is currently on the brink of extinction and therefore meets the definition of endangered. We find that the Georgetown salamander is presently in danger of extinction throughout its entire range based on the immediacy, severity, and scope of the threats described above. The Georgetown salamander species is proposed as endangered, rather than threatened, because the threats are occurring now or are imminent, and their potential impacts to the species would be catastrophic given the very limited range of the species, making the salamander at risk of extinction at the present time. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Georgetown salamander as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Georgetown salamander proposed for listing in this rule is highly restricted in its range, and the threats occur throughout its entire range. Therefore, the threats to the survival of this species are not restricted to any particular significant portion of that range. Accordingly, our assessment and

proposed determination applies to the species throughout its entire range.

Salado Salamander

The primary threat to this species is habitat modification (Factor A) in the form of reduced flows and degradation of water quality of spring habitats as a result of urbanization within the watersheds and recharge and contributing zones of the Edwards Aquifer. Urbanization leads to increases in sedimentation, contaminants, and nutrient loads as well as decreases in aquatic invertebrates (the Salado salamander's prey base).

We analyzed the impervious cover estimates of each watershed within the Salado salamander's range along with the amount of land currently managed as open space that could possibly contribute water quality benefits to the salamander's habitat. The two watersheds within the Salado salamander's range have 0.31 percent and 0.91 percent impervious cover. Although four known Salado salamander sites are located on large, undeveloped ranches (8,126 ac [3,288 ha] and 827 ac [335 ha]), a significant portion of the recharge zone for the Northern Segment of the Edwards Aquifer that supplies water to this species' habitat extends to areas outside of these properties. We could not identify any large tracts managed specifically as open space within the Salado salamander's range. We also could not identify any agreements in place to preserve or manage any properties for the benefit of this species or its habitat. Furthermore, population projections from the Texas State Data Center (2009, p. 19) estimate that Bell County will increase in population from 237,974 in 2000, to 397,741 in 2040, a 67 percent increase over the 40-year period. In consideration of this information and analysis, we believe the threat of habitat modification in the form of water quality degradation is ongoing and of medium impact throughout the Salado salamander's range.

In regards to adequate regulatory mechanisms to protect water quality, it is unlikely that water quality within the Salado salamander's habitat will be protected if development occurs in these watersheds into the foreseeable future. We therefore consider the inadequacy of existing regulatory mechanisms (Factor D) to be an ongoing threat of high impact.

The Edwards Aquifer is at risk from a variety of sources of pollutants (Ross 2011, p. 4), including hazardous materials that could be spilled or leaked, potentially resulting in the

contamination of both surface and groundwater resources (Service 2005, pp. 1.6–14–1.6–15). A catastrophic spill could occur if a truck transporting hazardous materials overturned and spilled its contents over the recharge zone of the aquifer. Salado salamander sites located downstream of Interstate Highway 35 may be particularly vulnerable due to their proximity to this major transportation corridor. Should a hazardous materials spill occur at the Interstate Highway 35 bridge that crosses at Salado Creek, this species could be at risk from contaminants entering the water flowing into its surface habitat downstream.

Several groundwater contamination incidents have occurred within Salado salamander habitat (Price *et al.* 1999, p. 10). Because these groundwater contamination events are already occurring and because the Salado salamander's range is restricted to only a few known spring sites, we consider the threat of hazardous materials spills to be ongoing and of high impact to this species.

Construction activities resulting from urban development are a threat to both water quality and quantity because they can increase sedimentation and dewater springs by intercepting aquifer conduits. The Service is not aware of any specific, large-scale construction activities currently ongoing within the Salado salamander's range. However, because the human population is increasing rapidly in this area, urbanization and subsequent construction activities are likely to impact the few known Salado salamander populations within the foreseeable future. Thus, we believe construction activities are an ongoing threat of low impact to this species.

Another potential threat to the Salado salamander and its habitat is low flow conditions in the aquifer and within this species' surface habitat due to urbanization and recent drought conditions. Robertson Springs (Salado salamander habitat) reportedly went temporarily dry in 2009 (TPWD 2011a, p. 5). Although *Eurycea* salamanders may spend some time below the surface in underground aquatic habitat areas to adapt to periodic flow losses (O'Donnell *et al.* 2006, p. 47), drying spring habitats can result in stranding salamanders (TPWD 2011a, p. 5). Also, prey availability is likely low underground due to the lack of primary production (Hobbs and Culver 2009, p. 392).

Future climate change could also affect water quantity and spring flow for the Salado salamander. Climate change could compound the threat of decreased water quantity at salamander spring sites. The effects of climate change on

aquifer-dependant species is difficult to assess; however, the Edwards Aquifer is predicted to experience additional stress from climate change that could lead to decreased recharge and low or ceased spring flows given increasing pumping demands (Loaiciga *et al.* 2000, pp. 192–193). In consideration of the information presented above, we believe that habitat modification in the form of water quantity reduction to be an ongoing threat of medium magnitude to this species.

All four salamanders are sensitive to direct physical habitat modification, such as those resulting from human recreational activities, impoundments, feral hogs, and livestock. Destruction of Salado salamander habitat has been attributed to direct human modification (including heavy machinery use, outflow channel reconstruction, and substrate alteration at Big Boiling Springs) and feral hog activity (Service 2010b, p. 6; Gluesenkamp 2011a, b, pers. comm.). Because there is ongoing physical habitat modification occurring to known Salado salamander sites within a very restricted range, we consider this threat resulting from human recreational activities to be ongoing and of low impact to this species. Furthermore, we consider the threats of impoundments, feral hogs, and livestock to be ongoing, but of low impact.

Predation and disease (Factor C) may be affecting the Salado salamander, but there is not enough evidence to consider these factors threats. Neither factor is at a level that we consider to be threatening the continued existence of the Salado salamander species now or in the foreseeable future.

Other natural or manmade factors (Factor E) affecting the Salado salamander include UV-B radiation, small population sizes, stochastic events, and synergistic and additive interactions among stressors. Increased levels of UV-B radiation, due to the depletion of stratospheric ozone layers has been shown to cause significant mortality and deformities in amphibian species (Blaustein *et al.* 1997, p. 13,735), although the effects of UV-B radiation on this species are unknown. Small population sizes may act synergistically with other traits of the species (such as its limited distribution) to increase its overall risk of extinction (Davies *et al.* 2004, p. 270). Stochastic events, such as severe weather or demographic changes to the population, are also heightened threats because of its restricted range and small population sizes (Melbourne and Hastings 2008, p. 100). We therefore consider this to be an ongoing threat of high impact.

The population status of Salado salamanders is unknown. A lack of long-term data prevents us from drawing conclusions on how Salado salamander populations may be changing over time. However, similar to Austin blind and Jollyville plateau salamander populations, we expect Salado salamander populations to trend downwards in the future as human population growth and urbanization in the area drive declines in habitat quality and quantity. Due to its relatively small range and small number of populations, we believe the species' resiliency to the threats outlined above is low.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." Due to its susceptibility to threats that are ongoing throughout its entire range, we determine that the Salado salamander is currently on the brink of extinction and therefore meets the definition of endangered. We find that the Salado salamander is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. This salamander species is proposed as endangered, rather than threatened, because the threats are occurring now or are imminent, and their potential impacts to the species would be catastrophic given the very limited range of the species, making the salamander at risk of extinction at the present time. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Salado salamander as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Salado salamander proposed for listing in this rule is highly restricted in its range, and the threats occur throughout its entire range. Therefore, the threats to the survival of this species are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions,

requirements for Federal protection, and prohibitions against certain practices. Recognition through listing can result in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, non-government organizations, and stakeholders) are often established to develop recovery plans. If we list these four central Texas salamanders, when completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (<http://www.fws.gov/endangered>), or from our Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a

broad range of partners, including other Federal agencies, States, Tribal, non-governmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these four species requires cooperative conservation efforts on private, local government, and other lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and non-governmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection and recovery of the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal

action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to, issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; Federal Emergency Management Agency for floodplain map revisions; U.S. Department of Agriculture Rural Development grants; Housing and Urban Development grants; Service for Partners projects; Service issuance of section 10 permits under the Act; construction and maintenance of roads or highways by the Federal Highway Administration; Natural Resources Conservation Service funded projects; and Environmental Protection Agency pesticide registration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of

section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Introduction of nonnative species that compete with or prey upon any of the four salamanders, such as the introduction of competing, nonnative aquatic animals to the State of Texas.

(3) The unauthorized release of biological control agents that attack any life stage of these four species.

(4) Unauthorized modification of the spring opening, stream channel, or water flow of any spring or stream or removal or destruction of substrate in any body of water in which any of the four salamanders are known to occur.

(5) The interception of groundwater such that it reduces water flow into any waters where any of the four salamanders are known to occur.

(6) Unauthorized discharge of chemicals or fill material into any waters in which any of the four salamanders are known to occur.

If the four central Texas salamanders are listed under the Act, the State of Texas' endangered species law is automatically invoked, which would also prohibit take of these species and encourage conservation by State government agencies. Chapter 68, section 68.002 of the TPWD's Code defines State-level endangered species as those species of fish or wildlife indigenous to Texas that are listed on: (1) The United States List of Endangered and Threatened Wildlife; or (2) the list of fish or wildlife threatened with Statewide extinction as filed by the director of the department. Further, the State of Texas may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species. Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to these species by listing them as endangered species will be reinforced and

supplemented by protection under State law.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512-490-0057; facsimile 512-490-0974.

Prudency Determination

Section 4 of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) the designation of critical habitat would not be beneficial to the species.

There is no documentation that the four Texas salamanders are significantly threatened by collection. Although human visitation to four Texas salamanders' habitat carries with it the possibility of introducing infectious disease and potentially increasing other threats where the salamanders occur, the locations of important recovery areas are already accessible to the public through Web sites, reports, online databases, and other easily accessible venues. Therefore, identifying and mapping critical habitat is unlikely to increase threats to the four Texas salamander species or their habitats. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of critical habitat to the four Texas salamanders include: (1) Triggering consultation under section 7 of the Act where a Federal nexus may not otherwise occur (for example, a critical habitat unit may become unoccupied, and without critical habitat designation, a consultation would not occur on a project that may affect an unoccupied area); (2) focusing conservation activities on the most essential features and areas; (3) providing educational

benefits to State or county governments, or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to any of the four salamander species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders.

Proposed Critical Habitat Designation for the Four Central Texas Salamanders

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders in this section of the proposed rule.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of

critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the elements or components of physical or biological features that are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate

to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy

findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for the four central Texas salamander species from studies of these species' habitat, ecology, and life history as described below. Additional information can be found in the listing portion of this proposed rule. We have determined that the aquatic ecosystem of the Barton Springs Segment of the Edwards Aquifer is the physical or biological feature essential for the Austin blind salamander. We have determined that the aquatic ecosystem of the Northern Segment of the Edwards Aquifer is the physical or biological feature essential for the Jollyville Plateau salamander, the Georgetown salamander, and the Salado salamander.

Space for Individual and Population Growth and for Normal Behavior

Austin Blind Salamander

The Austin blind salamander has been found where water emerges from the ground as a free-flowing spring.

However, this species is rarely seen at the surface of the spring, so it is assumed that it is subterranean for most of its life (Hillis *et al.* 2001, p. 267). Supporting this assumption is the fact that the species' physiology is cave-adapted, with reduced eyes and pale coloration (Hillis *et al.* 2001, p. 267). Most individuals found on the surface near spring openings are juveniles (Hillis *et al.* 2001, p. 273). Austin blind salamanders have been found in the streambed a short distance (about 33 ft (10 m)) downstream of Sunken Gardens Spring (Dries, 2011, pers. comm.). Therefore, based on the information above, we identify springs, associated streams, and underground spaces within the aquifer to be the primary components of the physical or biological features essential to the conservation of this species.

Jollyville Plateau Salamander

The Jollyville Plateau salamander occurs where water emerges from the ground as a free-flowing spring and stream. Within the spring ecosystem, proximity to the springhead is important because of the appropriate stable water chemistry and temperature, substrate, and flow regime. Jollyville Plateau salamanders are known to use the underground aquifer for habitat when surface habitats go dry (Bendik 2011a, p. 31). Georgetown salamanders, a closely related species, are found up to 164 ft (50 m) from a spring opening (Pierce *et al.* 2011a, p. 4), but they are most abundant within the first 16 ft (5 m) (Pierce *et al.* 2010, p. 294). Forms of Jollyville Plateau salamander with cave morphology have been found in several underground streams (Chippindale *et al.* 2000, pp. 36–37; TPWD 2011a, pp. 9–10). Therefore, based on the information above, we identify springs, associated streams, and underground spaces within the aquifer to be the primary components of the physical or biological features essential to the conservation of this species.

Georgetown Salamander

The Georgetown salamander occurs where water emerges from the ground as a free-flowing spring and stream. Within the spring ecosystem, proximity to the springhead is important because of the appropriate stable water chemistry and temperature, substrate, and flow regime. Georgetown salamanders are found within 164 ft (50 m) of a spring opening (Pierce *et al.* 2011a, p. 4), but they are most abundant within the first 16 ft (5 m) (Pierce *et al.* 2010, p. 294). Georgetown salamanders are also thought to use the underground aquifer for habitat, similar to other closely

related *Eurycea* species. Forms of Georgetown salamander with cave morphology have been found at two locations (TPWD 2011a, p. 8), indicating that they spend most of their lives underground at these locations. Therefore, based on the information above, we identify springs, associated streams, and underground spaces within the aquifer to be the primary components of the physical or biological features essential to the conservation of this species.

Salado Salamander

The Salado salamander occurs where water emerges from the ground as a free-flowing spring and stream. Within the spring ecosystem, proximity to the springhead is important because of the appropriate stable water chemistry and temperature, substrate, and flow regime. *Eurycea* salamanders are rarely found more than 66 ft (20 m) from a spring source (TPWD 2011, p. 3). However, Georgetown salamanders, a similar species, are found up to 164 ft (50 m) downstream of a spring opening. Salado salamanders are also thought to use the underground aquifer for habitat in times of drought when surface habitat is no longer available or suitable (TPWD 2011, p. 3), similar to other closely related *Eurycea* species (Bendik 2011a, p. 31). Therefore, based on the information above, we identify springs, associated streams, and underground spaces within the aquifer to be the primary components of the physical or biological features essential to the conservation of this species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Austin Blind Salamander

No species-specific dietary study has been completed, but the diet of the Austin blind salamander is presumed to be similar to other *Eurycea* species, consisting of small aquatic invertebrates such as amphipods, copepods, isopods, and insect larvae (reviewed in COA 2001, pp. 5–6). The feces of one wild-caught Austin blind salamander contained amphipods, ostracods, copepods, and plant material (Hillis *et al.* 2001, p. 273).

Austin blind salamanders are strictly aquatic and spend their entire lives submersed in water from the Barton Springs Segment of the Edwards Aquifer (Hillis *et al.* 2001, p. 273). These salamanders, and the prey that they feed on, require water sourced from the Edwards Aquifer at sufficient flows (quantity) to meet all of their physiological requirements. This water

should be flowing and unchanged in chemistry, temperature, and volume from natural conditions. The average water temperature at Austin blind salamander sites in Barton Springs is between 67.8 and 72.3 °F (19.9 and 22.4 °C) (COA 2011b, unpublished data).

Edwards Aquifer *Eurycea* are adapted to a lower ideal range of oxygen saturations compared to other salamanders (Turner 2009, p. 11). However, *Eurycea* salamanders need dissolved oxygen concentrations to be above a certain concentration, as the co-occurring Barton Springs salamander demonstrates declining abundance with declining dissolved oxygen levels (Turner 2009, p. 14). Woods *et al.* (2010, p. 544) observed a number of physiological effects to low dissolved oxygen concentrations (below 4.5 milligrams of oxygen per liter (mg L^{-1})) in the related San Marcos salamander, including decreased metabolic rates and decreased juvenile growth rates. Barton Springs salamander abundance is highest when dissolved oxygen is between 5 to 7 mg L^{-1} (Turner 2009, p. 12). Therefore, we assume that the dissolved oxygen level of water is important to the Austin blind salamander as well. The mean annual dissolved oxygen (from 2003 through 2011) at Main Spring, Eliza Spring, and Sunken Garden Spring is 6.36, 5.89, and 5.95 mg L^{-1} , respectively (COA 2011b, unpublished data).

The conductivity of water is also important to salamander physiology because it is related to the concentration of ions in the water. Increased conductivity is associated with increased water contamination and decreased *Eurycea* abundance (Willson and Dorcas 2003, pp. 766–768; Bowles *et al.* 2006, pp. 117–118). The lower limit of observed conductivity in developed Jollyville Plateau salamander sites where salamander densities were lower was 800 microsiemens per centimeter ($\mu\text{S cm}^{-1}$) (Bowles *et al.* 2006, p. 117). Salamanders were significantly more abundant at undeveloped sites where water conductivity averaged 600 $\mu\text{S cm}^{-1}$ (Bowles *et al.* 2006, p. 117). Because of its similar physiology to the Jollyville Plateau salamander, we assume that the Austin blind salamander will have a similar response to elevated water conductance. Although one laboratory study on the related San Marcos salamander demonstrated that conductivities up to 2738 $\mu\text{S cm}^{-1}$ had no measurable effect on adult activity (Woods and Poteet 2006, p. 5), it remains unclear how elevated water conductance might affect juveniles or

the long-term health of salamanders in the wild. In the absence of better information on the sensitivity of salamanders to changes in conductivity (or other contaminants), it is reasonable to assume that salamander survival, growth, and reproduction will be most successful when water quality is unaltered from natural aquifer conditions. The average water conductance at Main Spring, Eliza Spring, and Sunken Garden Spring is between 605 and 740 $\mu\text{S cm}^{-1}$, respectively (COA 2011b, unpublished data).

Therefore, based on the information above, we identify aquatic invertebrates and water from the Barton Springs Segment of the Edwards Aquifer with adequate dissolved oxygen concentration, water conductance, and water temperature to be the essential components of the physical or biological features essential to the conservation of this species.

Jollyville Plateau Salamander

As in other *Eurycea* species, the Jollyville Plateau salamander feeds on aquatic invertebrates that commonly occur in spring environments (reviewed in COA 2001, pp. 5–6). A gut content analysis by the City of Austin demonstrated that this salamander preys on varying proportions of ostracods, copepods, mayfly larvae, fly larvae, snails, water mites, aquatic beetles, and stone fly larvae depending on the location of the site (Bendik 2011b, p. 55).

Jollyville Plateau salamanders are strictly aquatic and spend their entire lives submerged in water from the Northern Segment of the Edwards Aquifer (COA 2001, pp. 3–4; Bowles *et al.* 2006, p. 112). These salamanders, and the prey that they feed on, require water sourced from the Edwards Aquifer at sufficient flows (quantity) to meet all of their physiological requirements. This water should be flowing and unchanged in chemistry, temperature, and volume from natural conditions. The average water temperature at Jollyville Plateau salamander sites with undeveloped watersheds ranges from 65.3 to 67.3 °F (18.5 to 19.6 °C) (Bowles *et al.* 2006, p. 115).

Edwards Aquifer *Eurycea* are adapted to a lower ideal range of oxygen saturations compared to other salamanders (Turner 2009, p. 11). However, *Eurycea* salamanders need dissolved oxygen concentrations to be above a certain concentration, as the related Barton Springs salamander demonstrates declining abundance with declining dissolved oxygen levels (Turner 2009, p. 14). In addition, Woods

et al. (2010, p. 544) observed a number of physiological effects to low dissolved oxygen concentrations (below 4.5 mg L^{-1}) in the related San Marcos salamander, including decreased metabolic rates and decreased juvenile growth rates. The average dissolved oxygen level of Jollyville Plateau salamander sites with little or no development in the watershed ranges from 5.6 to 7.1 mg L^{-1} (Bendik 2011a, p. 10). Based on this information, we conclude that the dissolved oxygen level of water is important to the Jollyville Plateau salamander for respiratory function.

The conductivity of water is also important to salamander physiology because it is related to the concentration of ions in the water. Increased conductivity is associated with increased water contamination and decreased *Eurycea* abundance (Willson and Dorcas 2003, pp. 766–768; Bowles *et al.* 2006, pp. 117–118). The lower limit of conductivity in developed Jollyville Plateau salamander sites where salamander densities were lower was 800 $\mu\text{S cm}^{-1}$ (Bowles *et al.* 2006, p. 117). Salamanders were significantly more abundant at undeveloped sites where water conductivity averaged 600 $\mu\text{S cm}^{-1}$ (Bowles *et al.* 2006, p. 117). The average water conductance of Jollyville Plateau salamander sites with little or no development in the watershed ranges from 550 to 625 $\mu\text{S cm}^{-1}$ (Bendik 2011a, p. 10, Bowles *et al.* 2006, p. 115). Although one laboratory study on the related San Marcos salamander demonstrated that conductivities up to 2738 $\mu\text{S cm}^{-1}$ had no measurable effect on adult activity (Woods and Poteet 2006, p. 5), it remains unclear how elevated water conductance might affect juveniles or the long-term health of salamanders in the wild. In the absence of better information on the sensitivity of salamanders to changes in conductivity (or other contaminants), it is reasonable to assume that salamander survival, growth, and reproduction will be most successful when water quality is unaltered from natural aquifer conditions.

Therefore, based on the information above, we identify aquatic invertebrates and water from the Northern Segment of the Edwards Aquifer, including adequate dissolved oxygen concentration, water conductance, and water temperature, to be the essential components of the physical or biological features essential for the conservation of this species.

Georgetown Salamander

No species-specific dietary study has been completed, but the diet of the Georgetown salamander is presumed to be similar to other *Eurycea* species, consisting of small aquatic invertebrates such as amphipods, copepods, isopods, and insect larvae (reviewed in COA 2001, pp. 5–6).

Georgetown salamanders are strictly aquatic and spend their entire lives submersed in water from the Northern Segment of the Edwards Aquifer (Pierce *et al.* 2010, p. 296). These salamanders, and the prey that they feed on, require water sourced from the Edwards Aquifer at sufficient flows (quantity) to meet all of their physiological requirements (TPWD 2011a, p. 8). This water should be flowing and unchanged in chemistry, temperature, and volume from natural conditions. Normal water temperature at a relatively undisturbed Georgetown salamander site ranges from 68.4 to 69.8 °F (20.2 to 21.0 °C) throughout the year (Pierce *et al.* 2010, p. 294).

Edwards Aquifer *Eurycea* are adapted to a lower ideal range of oxygen saturations compared to other salamanders (Turner 2009, p. 11). However, *Eurycea* salamanders need dissolved oxygen concentrations to be above a certain threshold, as the related Barton Springs salamander demonstrates declining abundance with declining dissolved oxygen levels (Turner 2009, p. 14). In addition, Woods *et al.* (2010, p. 544) observed a number of physiological effects to low dissolved oxygen concentrations (below 4.5 mg L⁻¹) in the related San Marcos salamander, including decreased metabolic rates and decreased juvenile growth rates. Georgetown salamander sites are characterized by high levels of dissolved oxygen, typically 6 to 8 mg L⁻¹ (Pierce and Wall 2011, p. 33). Therefore, we assume that the dissolved oxygen level of water is important to the Georgetown salamander for respiratory function.

The conductivity of water is also important to salamander physiology because it is related to the concentration of ions in the water. Increased conductivity is associated with increased water contamination and decreased *Eurycea* abundance (Willson and Dorcas 2003, pp. 766–768; Bowles *et al.* 2006, pp. 117–118). The lower limit of observed conductivity in developed Jollyville Plateau salamander sites where salamander densities were lower was 800 $\mu\text{S cm}^{-1}$ (Bowles *et al.* 2006, p. 117). Salamanders were significantly more abundant at undeveloped sites where water conductivity averaged 600 $\mu\text{S cm}^{-1}$

(Bowles *et al.* 2006, p. 117). Because of its similar physiology to the Jollyville Plateau salamander, we assume that the Georgetown salamander will have a similar response to elevated water conductance. Normal water conductance at a relatively undisturbed Georgetown salamander site ranges from 604 to 721 $\mu\text{S cm}^{-1}$ throughout the year (Pierce *et al.* 2010, p. 294). Although one laboratory study on the related San Marcos salamander demonstrated that conductivities up to 2738 $\mu\text{S cm}^{-1}$ had no measurable effect on adult activity (Woods and Poteet 2006, p. 5), it remains unclear how elevated water conductance might affect juveniles or the long-term health of salamanders in the wild. In the absence of better information on the sensitivity of salamanders to changes in conductivity (or other contaminants), it is reasonable to assume that salamander survival, growth, and reproduction will be most successful when water quality is unaltered from natural aquifer conditions.

Therefore, based on the information above, we identify aquatic invertebrates and water from the Northern Segment of the Edwards Aquifer, including adequate dissolved oxygen concentration, water conductance, and water temperature, to be essential components of the physical or biological features essential for the conservation of this species.

Salado Salamander

No species-specific dietary study has been completed, but the diet of the Salado salamander is presumed to be similar to other *Eurycea* species, consisting of small aquatic invertebrates such as amphipods, copepods, isopods, and insect larvae (reviewed in COA 2001, pp. 5–6).

As with other central Texas *Eurycea* species, Salado salamanders are strictly aquatic. Individuals spend their entire lives submersed in water from the Northern Segment of the Edwards Aquifer (TPWD 2011a, p. 3). These salamanders, and the prey that they feed on, require water sourced from the Edwards Aquifer at sufficient flows (quantity) to meet all of their physiological requirements. This water should be flowing and unchanged in chemistry, temperature, and volume from natural conditions.

Edwards Aquifer *Eurycea* are adapted to a lower ideal range of oxygen saturations compared to other salamanders (Turner 2009, p. 11). However, *Eurycea* salamanders need dissolved oxygen concentrations to be above a certain threshold, as the related Barton Springs salamander

demonstrates declining abundance with declining dissolved oxygen levels (Turner 2009, p. 14). In addition, Woods *et al.* (2010, p. 544) observed a number of physiological effects to low dissolved oxygen concentrations (below 4.5 mg L⁻¹) in the related San Marcos salamander, including decreased metabolic rates and decreased juvenile growth rates. Therefore, we assume that the dissolved oxygen level of water is important to the Salado salamander for respiratory function.

We also assume that the conductivity of water is important to salamander physiology because it is related to the concentration of ions in the water. Increased conductivity is associated with increased water contamination and decreased *Eurycea* abundance (Willson and Dorcas 2003, pp. 766–768; Bowles *et al.* 2006, pp. 117–118). The lower limit of conductivity in developed Jollyville Plateau salamander sites where salamander densities were lower was 800 $\mu\text{S cm}^{-1}$ (Bowles *et al.* 2006, p. 117). Salamanders were significantly more abundant at undeveloped sites where water conductivity averaged 600 $\mu\text{S cm}^{-1}$ (Bowles *et al.* 2006, p. 117). Although one laboratory study on the related San Marcos salamander demonstrated that conductivities up to 2738 $\mu\text{S cm}^{-1}$ had no measurable effect on adult activity (Woods and Poteet 2006, p. 5), it remains unclear how elevated water conductance might affect juveniles or the long-term health of salamanders in the wild. In the absence of better information on the sensitivity of salamanders to changes in conductivity (or other contaminants), it is reasonable to assume that salamander survival, growth, and reproduction will be most successful when water quality is unaltered from natural aquifer conditions.

Therefore, based on the information above, we identify aquatic invertebrates and water from the Northern Segment of the Edwards Aquifer, including adequate dissolved oxygen concentration, water conductance, and water temperature, to be essential components of the physical or biological features essential for the conservation of this species.

Cover or Shelter

Austin Blind Salamander

The Austin blind salamander likely spends most of its life below the surface in the aquifer, and may only be flushed to the surface accidentally (Hillis *et al.* 2001, p. 273). While on the surface near spring outlets, they move into interstitial spaces (empty voids between rocks) within the substrate, using these

spaces for foraging habitat and cover from predators similar to other *Eurycea* salamanders in central Texas (Cole 1995, p. 24; Pierce and Wall 2011, pp. 16–17). The surface is believed to be important as a source of food for this primarily subterranean species. These spaces should be free from sediment, as sediment fills interstitial spaces, eliminating resting places and also reducing habitat of the prey base (small aquatic invertebrates) (O'Donnell *et al.* 2006, p. 34). Austin blind salamanders have been observed under rocks and vegetation (Dries 2011, pers. comm.).

Therefore, based on the information above, we identify rocky substrate, consisting of boulder, cobble, and gravel, with interstitial space that is free from sediment, to be an essential component of the physical or biological features essential for the conservation of this species.

Jollyville Plateau Salamander

Similar to other *Eurycea* salamanders in central Texas, Jollyville Plateau salamanders move an unknown depth into the interstitial spaces (empty voids between rocks) within the substrate, using these spaces for foraging habitat and cover from predators (Cole 1995, p. 24; Pierce and Wall 2011, pp. 16–17). These spaces should be free from sediment, as sediment fills interstitial spaces, eliminating resting places and also reducing habitat of the prey base (small aquatic invertebrates) (O'Donnell *et al.* 2006, p. 34).

Jollyville Plateau salamanders have been observed under rocks, leaf litter, and other vegetation (Bowles *et al.* 2006, pp. 114–116). There was a strong positive relationship between salamander abundance and the amount of available rocky substrate (Bowles *et al.* 2006, p. 114).

Therefore, based on the information above, we identify rocky substrate, consisting of boulder, cobble, and gravel, with interstitial space that is free from sediment, to be an essential component of the physical or biological features essential for the conservation of this species.

Georgetown Salamander

Similar to other *Eurycea* salamanders in central Texas, Georgetown salamanders move an unknown depth into the interstitial spaces (empty voids between rocks) within the substrate, using these spaces for foraging habitat and cover from predators (Cole 1995, p. 24; Pierce and Wall 2011, pp. 16–17). These spaces should be free from sediment, as sediment fills interstitial spaces, eliminating resting places and also reducing habitat of the prey base

(small aquatic invertebrates) (O'Donnell *et al.* 2006, p. 34).

Georgetown salamanders have been observed under rocks, leaf litter, woody debris, and other cover objects (Pierce *et al.* 2010, p. 295). There is evidence that these salamanders prefer large rocks over other cover objects (Pierce *et al.* 2010, p. 295), which is consistent with other studies on *Eurycea* habitat (Bowles *et al.* 2006, p. 114).

Therefore, based on the information above, we identify rocky substrate, consisting of boulder, cobble, and gravel, with interstitial space that is free from sediment, to be an essential component of the physical or biological features essential for the conservation of this species.

Salado Salamander

Because of its similarity to other *Eurycea* salamanders in central Texas, we assume that the Salado salamander spends some proportion of its life below the surface between rocks. *Eurycea* salamanders move an unknown depth into the interstitial spaces (empty voids between rocks) within the substrate, using these spaces for foraging habitat and cover from predators (Cole 1995, p. 24; Pierce and Wall 2011, pp. 16–17). These spaces should be free from sediment, as sediment fills interstitial spaces, eliminating resting places and also reducing habitat of the prey base (small aquatic invertebrates) (O'Donnell *et al.* 2006, p. 34).

Salado salamanders have been observed under cover objects, such as rocks (Gluesenkamp 2011a, pers. comm.). Although no study has demonstrated the substrate preference of the Salado salamander, we assume that this species prefers large rocks over other cover objects, similar to other closely related *Eurycea* salamanders. Larger rocks provide more suitable interstitial spaces for foraging and cover.

Therefore, based on the information above, we identify rocky substrate, consisting of boulder, cobble, and gravel, with interstitial space that is free from sediment, to be an essential component of the physical or biological features essential for the conservation of this species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Austin Blind Salamander

Little is known about the reproductive habits of this species. However, the Austin blind salamander is fully aquatic, and therefore spends all of its life cycles in aquifer and spring waters. Eggs of central Texas *Eurycea* are rarely seen on the surface, so it is widely

assumed that eggs are laid underground (Gluesenkamp 2011a, pers. comm.; Bendik 2011b, pers. comm.). Most Austin blind salamanders found on the surface are juveniles (Hillis *et al.* 2001, p. 267).

Jollyville Plateau Salamander

Little is known about the reproductive habits of this species. However, the Jollyville Plateau salamander is fully aquatic, and therefore spends all of its life cycles in aquifer and spring waters. Eggs of central Texas *Eurycea* are rarely seen on the surface, so it is widely assumed that eggs are laid underground (Gluesenkamp 2011a, pers. comm.; Bendik 2011b, pers. comm.).

Georgetown Salamander

Little is known about the reproductive habits of this species. However, the Georgetown salamander is fully aquatic, and therefore spends all of its life cycles in aquifer and spring waters. Eggs of central Texas *Eurycea* are rarely seen on the surface, so it is widely assumed that eggs are laid underground (Gluesenkamp 2011a, pers. comm.; Bendik 2011b, pers. comm.).

Salado Salamander

Little is known about the reproductive habits of this species. However, the Salado salamander is fully aquatic, and therefore spends all of its life cycles in aquifer and spring waters. Eggs of central Texas *Eurycea* are rarely seen on the surface, so it is widely assumed that eggs are laid underground (Gluesenkamp 2011a, pers. comm.; Bendik 2011b, pers. comm.).

Primary Constituent Elements for the Four Central Texas Salamanders

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the salamander species in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to these salamander species are surface springs, underground streams, and wet caves containing:

Austin Blind Salamander

1. *Water from the Barton Springs Segment of the Edwards Aquifer.* The

groundwater must be similar to natural aquifer conditions both underground and as it discharges from natural spring outlets. Concentrations of water quality constituents that could have a negative impact on the salamander should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Austin blind salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites must be present, with at least temporal surface flow from the spring sites and continuous flow in the subterranean habitat. The water chemistry must be similar to natural aquifer conditions, with temperatures between 67.8 and 72.3 °F (19.9 and 22.4 °C), dissolved oxygen concentrations between 5 and 7 mg L⁻¹, and specific water conductance between 605 and 740 μS cm⁻¹.

2. *Rocky substrate with interstitial spaces.* Rocks (boulders, cobble, or gravel) in the substrate of the salamander's surface aquatic habitat should be large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces should have minimal sedimentation.

3. *Aquatic invertebrates for food.* The spring and cave environments should be capable of supporting a diverse aquatic invertebrate community that includes crustaceans and insects.

4. *Subterranean aquifer.* During periods of drought or dewatering on the surface in and around spring sites, access to the subsurface water table must exist to provide shelter and protection.

Jollyville Plateau Salamander

1. *Water from the Northern Segment of the Edwards Aquifer.* The groundwater must be similar to natural aquifer conditions both underground and as it discharges from natural spring outlets. Concentrations of water quality constituents that could have a negative impact on the salamander should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Jollyville Plateau salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites must be present, with at least temporal surface flow for spring sites and continuous flow in subterranean habitats. The water chemistry must be similar to natural aquifer conditions, with temperatures between 65.3 and 67.3 °F (18.5 and 19.6 °C), dissolved

oxygen concentrations between 5.6 and 7.1 mg L⁻¹, and specific water conductance between 550 and 625 μS cm⁻¹.

2. *Rocky substrate with interstitial spaces.* Rocks (boulders, cobble, or gravel) in the substrate of the salamander's surface aquatic habitat should be large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces should have minimal sedimentation.

3. *Aquatic invertebrates for food.* The spring and cave environments should be capable of supporting a diverse aquatic invertebrate community that includes crustaceans and insects.

4. *Subterranean aquifer.* During periods of drought or dewatering on the surface in and around spring sites, access to the subsurface water table must exist to provide shelter and protection.

Georgetown Salamander

1. *Water from the Northern Segment of the Edwards Aquifer.* The groundwater must be similar to natural aquifer conditions both underground and as it discharges from natural spring outlets. Concentrations of water quality constituents that could have a negative impact on the salamander should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Georgetown salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites must be present, with at least temporal surface flow for spring sites and continuous flow for subterranean sites. The water chemistry must be similar to natural aquifer conditions, with temperatures between 68.4 and 69.8 °F (20.2 and 21.0 °C), dissolved oxygen concentrations between 6 and 8 mg L⁻¹, and specific water conductivity between 604 and 721 μS cm⁻¹.

2. *Rocky substrate with interstitial spaces.* Rocks (boulders, cobble, or gravel) in the substrate of the salamander's surface aquatic habitat should be large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces should have minimal sedimentation.

3. *Aquatic invertebrates for food.* The spring and cave environments should be capable of supporting a diverse aquatic invertebrate community that includes crustaceans and insects.

4. *Subterranean aquifer.* During periods of drought or dewatering on the surface in and around spring sites,

access to the subsurface water table must exist to provide shelter and protection.

Salado Salamander

1. *Water from the Northern Segment of the Edwards Aquifer.* The groundwater must be similar to natural aquifer conditions both underground and as it discharges from natural spring outlets. Concentrations of water quality constituents that could have a negative impact on the salamander should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Salado salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites must be present, with at least temporal surface flow for spring sites and continuous flow for subterranean sites. The water chemistry must be similar to natural aquifer conditions, with temperatures between 65.3 and 69.8 °F (18.5 and 21.0 °C), dissolved oxygen concentrations between 5.6 and 8 mg L⁻¹, and conductivity between 550 and 721 μS cm⁻¹. The best scientific evidence available suggests that the groundwater of Salado salamander habitat is the same as Georgetown and Jollyville Plateau salamander habitat in terms of chemistry. Therefore, we include here for the Salado salamander the range of water chemistry parameters that encompass the ranges found in Jollyville and Georgetown salamander habitats.

2. *Rocky substrate with interstitial spaces.* Rocks (boulders, cobble, or gravel) in the substrate of the salamander's surface aquatic habitat should be large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces should have minimal sedimentation.

3. *Aquatic invertebrates for food.* The spring and cave environments should be capable of supporting a diverse aquatic invertebrate community that includes crustaceans and insects.

4. *Subterranean aquifer.* During periods of drought or dewatering on the surface in and around spring sites, access to the subsurface water table should be provided for shelter and protection.

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of the primary constituent elements sufficient to support the life-history processes of the species. All units and subunits

proposed to be designated as critical habitat are currently occupied by one of the four salamander species and contain the primary constituent elements sufficient to support the life-history needs of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: Water quality degradation from contaminants, alteration to natural flow regimes, and physical habitat modification.

For these salamanders, special management considerations or protection are needed to address threats. Management activities that could ameliorate threats include (but are not limited to): (1) Protecting the quality of cave and spring water by implementing comprehensive programs to control and reduce point sources and non-point sources of pollution throughout the Barton Springs and Northern Segments of the Edwards Aquifer, (2) minimizing the likelihood of pollution events that would affect groundwater quality, (3) protecting groundwater and spring flow quantity (for example, by implementing water conservation and drought contingency plans throughout the Barton Springs and Northern Segments), and (4) excluding cattle and feral hogs through fencing to protect spring habitats from damage.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders. During our preparation for proposing critical habitat for the four salamander species, we have reviewed: (1) Data for historical and current occurrence, (2) information pertaining to habitat features essential for the conservation of these species, and (3) scientific information on the biology and ecology of the four species. We have also reviewed a number of studies and surveys of the four salamander species that confirm historical and current occurrence of the

four species including, but not limited to, Sweet (1978; 1982), COA (2001), Chippindale *et al.* (2000), and Hillis *et al.* (2001). Finally, salamander site locations and observations were verified with the aid of salamander biologists, museum collection records, and site visits.

In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are not currently proposing to designate any additional areas outside the geographical area occupied by the species, because the occupied habitats proposed for critical habitat are sufficient for the conservation of the species. For the purpose of designating critical habitat for the four central Texas salamander species, we define an area as occupied based upon the reliable observation of a salamander species by a knowledgeable scientist. It is very difficult to prove unquestionably that a salamander population has been extirpated from a spring site due to these species' ability to occupy the inaccessible subsurface habitat. We therefore considered any site that had a salamander observation at any point in time currently occupied, unless that spring or cave site had been destroyed.

Based on our review, the proposed critical habitat areas described below constitute our best assessment at this time of areas that are within the geographical range occupied by at least one of the four salamander species, and are considered to contain features essential to the conservation of these species. The extent to which the subterranean populations of these species exist belowground away from outlets of the spring system is unknown. Because the hydrology of central Texas is very complex and information on the hydrology of specific spring sites are largely unknown, we will be seeking information on spring hydrology and salamander underground distribution during our public comment period (see **DATES**). However, at the time of this proposed listing rule, the best scientific evidence available suggests that the population of these salamanders can extend at least 984 ft (300 m) from the spring opening through underground conduits.

We are proposing for designation of critical habitat lands that we have determined are occupied by at least one of the four salamanders and contain sufficient elements of physical or biological features to support life-

history processes essential for the conservation of the species. We delineated both surface and subsurface critical habitat components. The surface critical habitat component was delineated by starting with the cave or spring point locations that are occupied by the salamanders and extending a line downstream 164 ft (50 m) because this is the farthest a salamander has been observed from a spring outlet. The surface critical habitat includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat, but does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas); however, the subterranean aquifer may extend below such structures. We delineated the subsurface critical habitat unit boundaries by starting with the cave or spring point locations that are occupied by the salamanders. From these cave or springs points, we delineated a 984-ft (300-m) buffer to create the polygons that capture the extent to which we believe the salamander populations exist through underground conduits. The polygons were then simplified to reduce the number of vertices, but still retain the overall shape and extent. Once that was done, polygons that were within 98 ft (30 m) of each other were merged together because these areas are likely connected underground. Each new merged polygon was then revised by removing extraneous divits or protrusions that resulted from the merge process.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack physical or biological features essential for the conservation of the four central Texas salamanders. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule, and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the underground or adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as

modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <http://regulations.gov> at Docket No. FWS-R2-ES-2012-0035, on our Internet site at <http://www.fws.gov/southwest/es/AustinTexas/>, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

We are proposing a total of 52 units for designation for the 4 central Texas salamanders based on sufficient elements of physical or biological features being present to support the Austin blind, Jollyville Plateau, Georgetown, and Salado salamanders' life-history processes. Some units contain all of the identified elements of physical or biological features and support multiple life-history processes.

Some units contain only some elements of the physical or biological features necessary to support the four central Texas salamanders' particular use of that habitat. In some units, the physical or biological features essential for the conservation of these salamanders have been impacted at times, and in some cases these impacts have had negative effects on the salamander populations there. We recognize that some units have experienced impacts and may have physical or biological features of lesser quality than others. Special management or protection is needed at these sites to restore the physical or biological features to provide for long-term sustainability of the species at these sites. In addition, high-quality sites need special protection, and in some cases management, to maintain their quality and ability to sustain the salamander populations over the long term.

We are proposing 1 unit as critical habitat for the Austin blind salamander, 33 units as critical habitat for the Jollyville Plateau salamander, 14 units

as critical habitat for the Georgetown salamander, and 4 units as critical habitat for the Salado salamander (52 units total). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the four salamander species. As previously noted, we are proposing both surface and subsurface critical habitat components. The surface critical habitat includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat, but does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas); however, the subterranean aquifer may extend below such structures. The subsurface critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the springs. The 52 units we propose as critical habitat are listed and described below, and acreages are based on the size of the subsurface critical habitat component. All units described below are occupied by one of the four salamander species.

TABLE 7—PROPOSED CRITICAL HABITAT UNIT FOR THE AUSTIN BLIND SALAMANDER

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Barton Springs Unit	City, Private	120 (49).
Total .....	.....	120 ac (49 ha).

Note: Area sizes may not sum due to rounding. Area estimates reflect all land within critical habitat unit boundaries.

TABLE 8—PROPOSED CRITICAL HABITAT UNITS FOR THE JOLLYVILLE PLATEAU SALAMANDER

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Krienke Spring Unit	Private	68 (28).
2. Brushy Creek Spring Unit	Private	68 (28).
3. Testudo Tube Cave Unit	Private, City	68 (28).
4. Buttercup Creek Cave Unit	Private	227 (92).
5. Treehouse Cave Unit	Private	68 (28).
6. Avery Spring Unit	Private	237 (96).
7. PC Spring Unit	Private	68 (28).
8. Baker and Audubon Spring Unit	Private	110 (45).
9. Wheless Spring Unit	Private, County	135 (55).
10. Blizzard R-Bar-B Spring Unit	Private	68 (28).
11. House Spring Unit	Private	68 (28).
12. Kelly Hollow Spring Unit	Private	68 (28).
13. MacDonald Well Unit	Private, County	68 (28).
14. Kretschmarr Unit	Private, County	112 (45).
15. Pope and Hiers (Canyon Creek) Spring Unit	Private	68 (28).
16. Fern Gully Spring Unit	Private, City	68 (28).
17. Bull Creek 1 Unit	Private, City, County	1,157 (468).
18. Bull Creek 2 Unit	Private, City, County	237 (96).
19. Bull Creek 3 Unit	Private, City	254 (103).
20. Moss Gulley Spring Unit	City, County	68 (28).
21. Ivanhoe Spring Unit	City	68 (28).
22. Sylvia Spring Unit	Private, City, County	103 (42).
23. Tanglewood Spring Unit	Private	68 (28).
24. Long Hog Hollow Unit	Private	68 (28).
25. Tributary 3 Unit	Private	68 (28).
26. Sierra Spring Unit	Private	68 (28).
27. Troll Spring Unit	Private	98 (40).
28. Stillhouse Unit	Private	203 (82).

TABLE 8—PROPOSED CRITICAL HABITAT UNITS FOR THE JOLLYVILLE PLATEAU SALAMANDER—Continued

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
29. Salamander Cave Unit	Private	68 (28).
30. Indian Spring Unit	Private	68 (28).
31. Spicewood Spring Unit	Private	68 (28).
32. Balcones District Park Spring Unit	Private, City	68 (28).
33. Tributary 4 Unit	Private, City	159 (64).
Total .....	.....	4,460 ac (1,816 ha).

Note: Area sizes may not sum due to rounding. Area estimates reflect all land within critical habitat unit boundaries.

TABLE 9—PROPOSED CRITICAL HABITAT UNITS FOR THE GEORGETOWN SALAMANDER

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Cobb Unit	Private	83 (34)
2. Cowen Creek Spring Unit	Private	68 (28).
3. Bat Well Unit	Private	68 (28).
4. Walnut Spring Unit	Private, County	68 (28).
5. Twin Springs Unit	Private, County	68 (28).
6. Hogg Hollow Spring Unit	Private, Federal	68 (28).
7. Cedar Hollow Spring Unit	Private	68 (28).
8. Lake Georgetown Unit	Federal, Private	132 (53).
9. Water Tank Cave Unit	Private	68 (28).
10. Avant Spring Unit	Private	68 (28).
11. Buford Hollow Spring Unit	Federal, Private	68 (28).
12. Swinbank Spring Unit	City, Private	68 (28).
13. Shadow Canyon Unit	City, Private	68 (28).
14. San Gabriel Springs Unit	City	68 (28).
Total .....	.....	1,031 ac (423 ha).

Note: Area sizes may not sum due to rounding. Area estimates reflect all land within critical habitat unit boundaries.

TABLE 10—PROPOSED CRITICAL HABITAT UNITS FOR THE SALADO SALAMANDER

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Hog Hollow Spring Unit	Private	68 (28)
2. Solana Spring #1 Unit	Private	68 (28).
3. Cistern Spring Unit	Private	68 (28).
4. IH-35 Unit	Private, State, City	168 (68).
Total .....	.....	372 ac (152 ha).

Note: Area sizes may not sum due to rounding. Area estimates reflect all land within critical habitat unit boundaries.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the four central Texas salamanders, below.

Austin Blind Salamander

Unit 1: Barton Springs Unit

The Barton Springs Unit consists of 120 ac (49 ha) of City and private land in the City of Austin, central Travis County, Texas. Most of the unit is located in Zilker Park, which is owned by the City of Austin. Most of the unit consists of landscaped areas managed as a public park. The southwestern portion of the unit is dense commercial development, and part of the southern portion contains residential development. Barton Springs Road, a major roadway, crosses the northeastern

portion of the unit. This unit contains Parthenia Spring, Sunken Gardens Spring, and Eliza Spring, which are occupied by Austin blind salamander. The springs are located in the Barton Creek watershed. Parthenia Spring is located in the backwater of Barton Springs Pool, which is formed by a dam on Barton Creek; Eliza Spring is on an unnamed tributary to the bypass channel of the pool; and Sunken Gardens Spring is located on a tributary that enters Barton Creek downstream of the dam for Barton Springs Pool. The unit contains all of the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future

development in the contributing and recharge zone for the Barton Springs segment of the Edwards Aquifer and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the underground aquifer in this area and the springs and fissure outlets. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles. Because we did not have specific points for species locations, we used the center of Eliza and Sunken Gardens springs and the southwestern point of a fissure in Parthenia Springs.

Jollyville Plateau Salamander

Unit 1: Krienke Spring Unit

Unit 1 consists of 68 ac (28 ha) of private land in southern Williamson County, Texas. The unit is located just south of State Highway 29. The northern part of the unit is in dense residential development, while the southern part of the unit is less densely developed. County Road 175 (Sam Bass Road) crosses the northern half of the unit. This unit contains Krienke Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary of Dry Fork, a tributary to Brushy Creek. The unit contains all the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 2: Brushy Creek Spring Unit

Unit 2 consists of 68 ac (28 ha) of private land in southern Williamson County, Texas. The unit is centered just south of Palm Valley Boulevard and west of Grimes Boulevard. The northern part of the unit is covered with commercial and residential development, while the southern part is less densely developed. Some areas along the stream are undeveloped. This unit contains Brushy Creek Spring, which is occupied by the Jollyville Plateau salamander. The spring is near Brushy Creek. The unit contains all the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 3: Testudo Tube Cave Unit

Unit 3 consists of 68 ac (28 ha) of City of Austin and private land in southern Williamson County and northern Travis County, Texas. The unit is located just east of Lime Creek Road. The unit is mostly undeveloped but several unpaved roads cross it. This unit contains Testudo Tube Cave, which is occupied by the Jollyville Plateau salamander. The cave and the surrounding area are owned by the City of Austin as water quality protection land. The cave contains the Tooth Cave ground beetle (*Rhadine persephone*), an endangered karst invertebrate. As part of the mitigation for the Lakeline Mall HCP, the cave must be protected and managed in perpetuity. These actions will provide some benefit to the Jollyville Plateau salamander. The unit contains all the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the cave. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the cave, representing the extent of the subterranean critical habitat.

Unit 4: Buttercup Creek Cave Unit

Unit 4 consists of 227 ac (92 ha) of private land in southern Williamson County, Texas. The unit is located east and south of the intersection of Lakeline Boulevard and Buttercup Creek Boulevard. The unit is mostly covered with residential property. Lakeline Boulevard, a major thoroughfare, crosses the northeast area of the unit. An undeveloped area of parks and setbacks is in the south central part of the unit. This unit contains four caves: TWASA Cave, Illex Cave, Buttercup Creek Cave, and Flea Cave, which are occupied by the Jollyville Plateau salamander. The three latter caves are located in a preserve set up as mitigation property under the Buttercup HCP. The HCP covers adverse impacts to the Tooth Cave ground beetle. Although the salamander is not covered under the Buttercup HCP, the protection afforded these caves by the HCP provides some benefit for the species. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater

pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section). The unit is within the Buttercup HCP, and impacts to the Tooth Cave ground beetle are permitted (Service 1999, p. 1). However, impacts to the Jollyville Plateau salamander are not covered under this HCP.

The proposed designation includes the caves. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the caves, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 5: Treehouse Cave Unit

Unit 5 consists of 68 ac (28 ha) of private land in southern Williamson County, Texas. The unit is located east of the intersection of Buttercup Creek Boulevard and Sycamore Drive. Most of the unit is covered with moderately dense residential development. A small park is close to the center of the unit, and a greenbelt crosses the unit from east to west. This unit contains Treehouse Cave, which is occupied by the Jollyville Plateau salamander. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the cave. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the cave, representing the extent of the subterranean critical habitat.

Unit 6: Avery Spring Unit

Unit 6 consists of 237 ac (96 ha) of private land in southern Williamson County, Texas. The unit is located north of Avery Ranch Boulevard and west of Parmer Lane. The unit has large areas covered by residential development. The developed areas are separated by fairways and greens of a golf course. This unit contains three springs: Avery Springhouse Spring, Hill Marsh Spring, and Avery Deer Spring, which are occupied by the Jollyville Plateau salamander. The springs are located on an unnamed tributary to South Brushy Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater

pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the three springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 7: PC Spring Unit

Unit 7 consists of 68 ac (28 ha) of private and public land in southern Williamson County, Texas. State Highway 45, a major toll road, crosses the north central part of the unit from east to west, and Ranch to Market Road 620 goes under it midway between the center and the western edge. Except for roadways, the unit is undeveloped. This unit contains PC Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Davis Spring Branch. The unit contains the primary constituent elements essential for the conservation of species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 8: Baker and Audubon Spring Unit

Unit 8 consists of 110 ac (45 ha) of private and Lower Colorado River Authority (LCRA) land in northern Travis County, Texas. The unit is located south of Lime Creek Road and southwest of the intersection of Canyon Creek Drive and Lime Springs Road. The unit is wooded, undeveloped, and owned by Travis Audubon Society and LCRA. The entire unit is managed as part of the Balcones Canyonlands HCP. This unit contains two springs, Baker Spring and Audubon Spring, which are occupied by the Jollyville Plateau salamander. The springs are in the drainage of an unnamed tributary to Cypress Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section). The unit is within the Balcones Canyonlands Preserve HCP, and impacts to 35 species are permitted (Service 1996b, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP.

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 9: Wheless Spring Unit

Unit 9 consists of 135 ac (55 ha) of private LCRA and Travis County land in northern Travis County, Texas. The unit is located about 0.8 mi (1.3 km) west of Grand Oaks Loop. The unit is wooded and consists of totally undeveloped land owned by LCRA and The Nature Conservancy. The unit is managed as part of the Balcones Canyonlands Preserve HCP. An unpaved road crosses the unit from north to south. This unit contains two springs, Wheless Spring and Spring 25, which are occupied by the Jollyville Plateau salamander. The springs are in the Long Hollow Creek drainage. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, habitat disturbance by feral hogs, and depletion of groundwater (see *Special Management Considerations or Protection* section). The unit is within the Balcones Canyonlands Preserve HCP, and impacts to 35 species are permitted (Service 1996b, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP.

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 10: Blizzard R-Bar-B Spring Unit

Unit 10 consists of 68 ac (28 ha) of private land in northern Travis County,

Texas. The unit is located west of Grand Oaks Loop. The extreme eastern portion of the unit is on the edge of residential development; a golf course (Twin Springs) crosses the central portion; and the remainder is wooded and undeveloped. This unit contains Blizzard R-Bar-B Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Cypress Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 11: House Spring Unit

Unit 11 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is located just north of Benevento Way Road. Dies Ranch Road crosses the extreme eastern part of the unit. The entire unit is covered with dense residential development except for a narrow corridor along the stream, which crosses the unit from north to south. Several streets are located in the unit. This unit contains House Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary to Lake Marble Falls. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 12: Kelly Hollow Spring Unit

Unit 12 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is located southeast of the intersection of Anderson Mill Road and Farm to Market Road 2769. With

the exception of a portion of Anderson Mill Road along the northern edge of the unit, this unit is primarily undeveloped woodland. This unit contains Kelly Hollow Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary to Lake Marble Falls. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 13: MacDonald Well Unit

Unit 13 consists of 68 ac (28 ha) of private and Travis County land in northern Travis County, Texas. The unit is centered near the intersection of Grand Oaks Loop and Farm to Market Road 2769. Farm to Market Road 2769 crosses the unit slightly north of its center. The northern portion of the unit contains residential development and part of Twin Creeks Golf Course. This unit contains MacDonald Well, which is occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary to Lake Marble Falls. The unit contains the primary constituent elements essential for the conservation of the species. The spring and adjacent land are protected and monitored as part of the Balcones Canyonlands Preserve HCP.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The unit is within the Balcones Canyonlands Preserve HCP, and impacts to 35 species are permitted (Service 1996b, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP.

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 14: Kretschmarr Unit

Unit 14 consists of 112 ac (45 ha) of private and Travis County land in northern Travis County, Texas. The unit is located west of Ranch to Market Road 620. Wilson Parke Avenue crosses the unit along its southern border. Most of the unit is undeveloped, with one commercial development near the west central portion. Some of the unit is owned and managed by Travis County as part of the Balcones Canyonlands Preserve. This unit contains three springs: Kretschmarr Salamander Cave, Unnamed Tributary Downstream of Grandview, and SAS Canyon, which are occupied by the Jollyville Plateau salamander. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We connected the edges of the resulting circles.

Unit 15: Pope and Hiers (Canyon Creek) Spring Unit

Unit 15 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is located between Bramblecrest Drive and Winchelsea Drive. The unit contains dense residential development on its northern, eastern, and western portions. The central portion of the unit is an undeveloped canyon and is preserved in perpetuity as part of a private preserve. This unit contains Canyon Creek Pope and Hiers Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Bull Creek Tributary 6. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was

further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 16: Fern Gully Spring Unit

Unit 16 consists of 68 ac (28 ha) of private and City of Austin land in northern Travis County, Texas. The unit is centered just south of the intersection of Jenaro Court and Boulder Lane. The unit contains dense residential development on much of its northern half. Most of the southern half of the unit is undeveloped land managed by the City of Austin as part of the Balcones Canyonlands Preserve HCP, and a portion is part of the Canyon Creek preserve, a privately managed conservation area. This unit contains Fern Gully Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Bull Creek Tributary 5. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The unit is within the Balcones Canyonlands Preserve HCP, and impacts to 35 species are permitted (Service 1996b, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP.

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 17: Bull Creek 1 Unit

Unit 17 consists of 1,157 ac (468 ha) of private, City of Austin, and Travis County land in northern Travis County, Texas. The unit extends from the southeastern portion of Chestnut Ridge Road to 3M Center, just north of Ranch to Market Road 2222. The unit contains some residential development on the extreme edge of its northern portion and part of Vandegrift High School near its southeastern corner. Most of the remainder of the unit is undeveloped land managed by the City of Austin and Travis County as part of the Balcones Canyonlands Preserve HCP. This unit contains the following 34 springs: Tubb Spring, Broken Bridge Spring, Spring 17, Tributary No. 5, Tributary 6 at Sewage Line, Canyon Creek, Tributary No. 6, Gardens of Bull Creek, Canyon

Creek Hog Wallow Spring, Spring 5, Franklin, Pit Spring, Bull Creek Spring Pool, Spring 1, Spring 4, Spring 2, Lanier Spring, Cistern (Pipe) Spring, Spring 3, Lanier 90-foot Riffle, Bull Creek at Lanier Tract, Ribelin/Lanier, Spring 18, Horsethief, Ribelin, Spring 15, Spring 16, Spring 14, Lower Ribelin, Spring 13, Spring 12, Upper Ribelin, Spring 10, and Spring 9. These springs are occupied by the Jollyville Plateau salamander and are located on Bull Creek and its tributaries. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, habitat destruction by feral hogs, and depletion of groundwater (see *Special Management Considerations or Protection* section). The unit is within the Balcones Canyonlands Preserve HCP, and impacts to 35 species are permitted (Service 1996b, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP.

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 18: Bull Creek 2 Unit

Unit 18 consists of 237 ac (96 ha) of private, City of Austin, and Travis County land in northern Travis County, Texas. The center of the unit is near the eastern end of Concordia University Drive. Concordia University is in the central and eastern parts of the unit. Much of the rest of the unit is undeveloped land managed by the City of Austin and Travis County as part of the Balcones Canyonlands Preserve HCP. This unit contains six springs: Schlumberger Spring No. 1, Schlumberger Spring No. 2, Schlumberger Spring No. 6, Schlumberger Spring No. 19, Concordia Spring X, and Concordia Spring Y, which are occupied by the Jollyville Plateau salamander. The springs are located on Bull Creek Tributary 7. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of

groundwater (see *Special Management Considerations or Protection* section). The unit is within the Balcones Canyonlands Preserve HCP, and impacts to 35 species are permitted (Service 1996b, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP.

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 19: Bull Creek 3 Unit

Unit 19 consists of 254 ac (103 ha) of private and City of Austin land in northern Travis County, Texas. The unit is just southeast of the intersection of Ranch to Market Road 620 and Vista Parke Drive. The unit contains dense residential development on much of its northern half. Most of the rest of the unit (about 134 ac (54.2 ha)) is undeveloped land managed by as part of the Four Points HCP. Much of the remainder of the unit is managed by the City of Austin as part of the Balcones Canyonlands Preserve HCP. This unit contains five springs: Spring No. 21, Spring No. 22, Spring No. 24, Hamilton Reserve West, and Gaas Spring, which are occupied by the Jollyville Plateau salamander. The springs are located on Bull Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles. Under section 4(b)(2) of the Act, certain lands in this unit are being considered for exclusion from the final rule for critical habitat (see *Application of Section 4(b)(2) of the Act* section below).

Unit 20: Moss Gulley Spring Unit

Unit 20 consists of 68 ac (28 ha) of City of Austin and Travis County land in northern Travis County, Texas. The unit is just east of the eastern end of Unit 19. The unit is all undeveloped

woodland, and all is managed by the City of Austin or Travis County as part of the Balcones Canyonlands Preserve HCP. This unit contains Moss Gulley Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Bull Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section). The unit is within the Balcones Canyonlands Preserve HCP, and impacts to 35 species are permitted (Service 1996b, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP.

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 21: Ivanhoe Spring Unit

Unit 21 consists of 68 ac (28 ha) of City of Austin land in northern Travis County, Texas. The unit is east of the northwest extent of High Hollow Drive. The unit is all undeveloped woodland, and is managed by the City of Austin as part of the Balcones Canyonlands Preserve HCP. This unit contains Ivanhoe Spring 2, which is occupied by the Jollyville Plateau salamander. The spring is located on West Bull Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, destruction of habitat by feral hogs, and depletion of groundwater (see *Special Management Considerations or Protection* section). The unit is within the Balcones Canyonlands Preserve HCP, and impacts to 35 species are permitted (Service 1996b, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP.

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 22: Sylvia Spring Unit

Unit 22 consists of 103 ac (42 ha) of private, City, and Williamson County land in northern Travis County and southwestern Williamson County, Texas. The unit is centered just east of the intersection Callanish Park Drive and Westerkirk Drive. The western, extreme northeastern, and extreme southern portions of the unit are residential development. An undeveloped stream corridor crosses the unit from north to south. This unit contains two springs: Small Sylvia Spring and Spicewood Valley Park Spring, which are occupied by the Jollyville Plateau salamander. The springs are located on an unnamed tributary to Tanglewood Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 23: Tanglewood Spring Unit

Unit 23 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is centered north of the intersection of Spicewood Springs Road and Yaupon Drive. Spicewood Springs Road crosses the unit from southwest to east. Residential and commercial development is found in most of the unit except in a stream corridor in the central part of the unit. An undeveloped stream corridor crosses the unit from east to west. This unit contains Tanglewood Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Tanglewood Creek, a tributary to Bull Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the

high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 24: Long Hog Hollow Unit

Unit 24 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is centered east of the intersection of Cassia Drive and Fireoak Drive. Most of the unit is in residential development. There are wooded corridors in the central and eastern portion of the unit. This unit contains Long Hog Hollow Tributary, which is occupied by the Jollyville Plateau salamander. The spring is located on Long Hog Hollow Tributary. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 25: Tributary 3 Unit

Unit 25 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is centered between Bluegrass Drive and Spicebush Drive. The eastern and western part of the unit is in residential development. There are wooded corridors in the central part of the unit, and scattered woodland in the eastern and western part. There is a golf course in the north-central part of the unit. This unit contains Tributary No. 3, which is occupied by the Jollyville Plateau salamander. The spring is located on Bull Creek Tributary 3. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle

with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 26: Sierra Spring Unit

Unit 26 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is located west of the intersection of Tahoma Place and Ladera Vista Drive. The eastern and western part of the unit is in residential development. A wooded corridor crosses the central part of the unit from north to south. This unit contains Sierra Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Bull Creek Tributary 3. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 27: Troll Spring Unit

Unit 27 consists of 98 ac (40 ha) of private land in northern Travis County, Texas. The unit is located west of the intersection of Jollyville Road and Taylor Draper Lane. The eastern and western part of the unit is in residential development. A wooded corridor crosses the central part of the unit from north to south. This unit contains two springs, Hearth Spring and Troll Spring, which are occupied by the Jollyville Plateau salamander. The springs are located on Bull Creek Tributary 3. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We

connected the edges of the resulting circles.

Unit 28: Stillhouse Unit

Unit 28 consists of 203 ac (82 ha) of private land in northern Travis County, Texas. The unit is centered due north of the intersection of West Rim Drive and Burney Drive. The northern and southern part of the unit is in residential development. A wooded corridor crosses the central part of the unit from east to west. This unit contains seven springs: Barrow Hollow Spring, Spring 20, Stillhouse Hollow Tributary, Stillhouse Tributary, Little Stillhouse Hollow Spring, Stillhouse Hollow Spring, and Barrow Preserve Tributary. All are occupied by the Jollyville Plateau salamander. The springs are located on an unnamed tributary to Bull Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflows up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We connected the edges of the resulting circles.

Unit 29: Salamander Cave Unit

Unit 29 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is centered near the southern end of Raintree Place, just north of Spicewood Springs Road. Most of the unit is covered with commercial and residential development, except for a small portion of wooded area near the center. A wooded corridor crosses the central part of the unit from east to west. This unit contains Salamander Cave, which is occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary to Shoal Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the

high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 30: Indian Spring Unit

Unit 30 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is centered just south of Greystone Drive about half way between its intersection with Edgerock Drive and Chimney Corners Drive. Most of the unit is covered with residential development except for a small wooded corridor that crosses the central part of the unit from east to west. This unit contains Indian Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary to Shoal Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 31: Spicewood Spring Unit

Unit 31 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is centered just northeast of the intersection of Ceberry Drive and Spicewood Springs Road, just downstream of the bridge on Ceberry Drive. Most of the unit is covered with commercial and residential development except for a small wooded corridor along the stream, which crosses the unit from north to east. This unit contains two springs, Spicewood Spring and Spicewood Tributary, which are occupied by the Jollyville Plateau salamander. The springs are located in an unnamed tributary to Shoal Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 32: Balcones District Park Spring Unit

Unit 32 consists of 68 ac (28 ha) of City of Austin and private land in northern Travis County, Texas. The unit is centered about 470 yards (430 m) northeast of the intersection of Duval Road and Amherst Drive. Most of the unit is in a city park (Balcones Community Park) with a swimming pool. A substantial amount of the park is wooded and undeveloped. There is dense commercial development in the southern and southeastern portions of the unit. This unit contains Balcones District Park Spring, which is occupied by the Jollyville Plateau salamander. The spring is located in the streambed of an unnamed tributary to Walnut Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 33: Tributary 4 Unit

Unit 33 consists of 159 ac (64 ha) of private and City of Austin land in northern Travis County, Texas. The unit is located west of the intersection of Spicewood Springs Road and Old Lampasas Trail in the Bull Creek Ranch community. The extreme western, northern, and eastern portions of the unit are residential development. Undeveloped stream corridors cross the unit from west to east. This unit contains three spring sites: Tributary 4 upstream, Tributary 4 downstream, and Spicewood Park Dam, which are occupied by the Jollyville Plateau salamander. The springs are located on Tributary 4 and an unnamed tributary to Bull Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Georgetown Salamander

Unit 1: Cobb Unit

Unit 1 consists of 83 ac (34 ha) of private land located in northwestern Williamson County, Texas. The unit is undeveloped land. This unit contains two springs, Cobb Springs and Cobb Well, both known to be occupied by the Georgetown salamander. Cobb Springs is located on Cobb Springs Branch, and Cobb Well is located on a tributary to the stream. The unit contains the primary constituent elements essential for the conservation of the species. Cobb Springs is a surface location, and Cobb Well is a subterranean location for the species.

The unit requires special management because of the potential for groundwater pollution from future development in the watershed and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat for Cobb Springs. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring and well, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 2: Cowen Creek Spring Unit

Unit 2 consists of 68 ac (28 ha) of private land located in west-central Williamson County, Texas. The northern portion of the unit is residential development; the remainder is undeveloped. This unit contains Cowan Creek Spring, which is occupied by the Georgetown salamander. The spring is located on Cowan Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and

depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 3: Bat Well Unit

Unit 3 consists of 68 ac (28 ha) of private land located in west-central Williamson County, Texas. The western, northern, and southern portion of the unit contains residential development. This unit contains Bat Well, located in a cave and known to be occupied by the Georgetown salamander. The cave is located in the Cowan Creek watershed. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the cave. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the cave, representing the extent of the subterranean critical habitat.

Unit 4: Walnut Spring Unit

Unit 4 consists of 68 ac (28 ha) of private and Williamson County land located in west-central Williamson County, Texas. The western, eastern, and northeastern portions of the unit contain low-density residential development; the southern and north-central portions are undeveloped. The extreme southeastern corner of the unit is part of Williamson County Conservation Foundation's Twin Springs Preserve. This unit contains Walnut Spring, which is occupied by the Georgetown salamander. The spring is located on Walnut Spring Hollow. The unit contains the primary constituent elements for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was

further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 5: Twin Springs Unit

Unit 5 consists of 68 ac (28 ha) of private and Williamson County land located in west-central Williamson County, Texas. The northern portion of the unit contains low-density residential development; the remainder of the unit is undeveloped. The majority of the unit is part of Williamson County Conservation Foundation's Twin Springs Preserve. The preserve is managed by Williamson Conservation Foundation as a mitigation property for the take of golden-cheeked warbler and Bone Cave under the Williamson County Regional Habitat Conservation Plan. The preserve habitat will be undeveloped in perpetuity. Salamander populations are monitored, and there is some control of public access. This unit contains Twin Springs, which is occupied by the Georgetown salamander. The spring is located on Taylor Ray Hollow, a tributary of Lake Georgetown. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 6: Hogg Hollow Spring Unit

Unit 6 consists of 68 ac (28 ha) of private and Federal undeveloped land located in west-central Williamson County, Texas. Part of this unit is on the U.S. Army Corps of Engineers Lake Georgetown's property. There are currently no plans to develop the property. There is some control of public access. This unit contains Hogg Hollow Spring, which is occupied by the Georgetown salamander. The spring is located on Hogg Hollow, a tributary to Lake Georgetown. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and

depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 7: Cedar Hollow Spring Unit

Unit 7 consists of 68 ac (28 ha) of private land in west-central Williamson County, Texas. A secondary road crossed the extreme southern portion of the unit, and there are residences in the northwestern, southwestern, and west central portions of the unit. This unit contains Cedar Hollow Spring, which is occupied by the Georgetown salamander. The spring is located on Cedar Hollow, a tributary to Lake Georgetown. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 8: Lake Georgetown Unit

Unit 8 consists of 132 ac (53 ha) of Federal and private land in west-central Williamson County, Texas. Part of the unit is U.S. Army Corps of Engineers Lake Georgetown property. There are currently no plans to develop the property. There is some control of public access. Unpaved roads are found in the western portion of the unit, and a trail begins in the central part of the unit and leaves the northeast corner. A secondary road crosses the extreme southern portion of the unit, and there are residences in the northwestern, southwestern, and west central portions of the unit. A large quarry is located a short distance southeast of the unit. This unit two springs, Knight (Crockett Gardens) Spring and Cedar Breaks Hiking Trail Spring, which are occupied by the Georgetown salamander. The springs are located on an unnamed tributary to Lake Georgetown. A portion of the northern part of the unit extends under Lake Georgetown. The unit

contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed present operations and future expansion of the quarry, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflows up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around each of the two springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 9: Water Tank Cave Unit

Unit 9 consists of 68 ac (28 ha) of private land in west-central Williamson County, Texas. A golf course crosses the unit from northwest to southeast, and there are several roads in the eastern part of the unit. A secondary road crosses the extreme southern portion of the unit, and there are residences in the northwestern, southwestern, and west central portions of the unit. This unit contains Water Tank Cave, a subterranean location, which is occupied by the Georgetown salamander. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the subterranean cave. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the cave, representing the extent of the subterranean critical habitat.

Unit 10: Avant Spring Unit

Unit 10 consists of 68 ac (28 ha) of private land in west-central Williamson County, Texas. The northern part of a large quarry is along the southwestern edge of the unit. The rest of the unit is undeveloped. This unit contains Avant's (Capitol Aggregates) Spring, which is occupied by the Georgetown salamander. The spring is close to the streambed of the Middle Fork of the San Gabriel River. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater

pollution from current and future development in the watershed and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlet and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 11: Buford Hollow Spring Unit

Unit 11 consists of 68 ac (28 ha) of Federal and private land in west-central Williamson County, Texas. The unit is located just below the spillway for Lake Georgetown. The U.S. Army Corps of Engineers owns most of this unit as part of Lake Georgetown. The D.B. Wood Road, a major thoroughfare, crosses the eastern part of the unit. The rest of the unit is undeveloped. This unit contains Buford Hollow Springs, which is occupied by the Georgetown salamander. The spring is located on Buford Hollow, a tributary to the North Fork San Gabriel River. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 12: Swinbank Spring Unit

Unit 12 consists of 68 ac (28 ha) of City and private land in west-central Williamson County, Texas. The unit is located near River Road south of Melanie Lane. The northern part of the unit is primarily in residential development, while the southern part of this unit is primarily undeveloped. This unit contains Swinbank Spring, which is occupied by the Georgetown salamander. The spring is located just off the main channel of North Fork San Gabriel River. The unit contains the primary constituent elements essential for the conservation of the species. The population of Georgetown salamanders in the spring is being monitored monthly as part of the Williamson

County Regional HCP's efforts to conserve the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and depletion of groundwater (see *Special Management Considerations or Protection* section). Although the Georgetown salamander has been given special consideration under the Williamson County Regional HCP, take is not covered for this species (Williamson County Conservation Foundation 2008, pp. 4–19). Actions authorized under the HCP for the covered species may impact the Georgetown salamander through habitat degradation (Williamson County Conservation Foundation 2008, pp. 4–19). This includes increased impervious cover and the associated decline in water quality.

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 13: Shadow Canyon Unit

Unit 13 consists of 68 ac (28 ha) of City and private land in west-central Williamson County, Texas. The unit is located just south of State Highway 29. This unit contains Shadow Canyon Spring, which is occupied by the Georgetown salamander. The spring is located on an unnamed tributary of South Fork San Gabriel River. The unit contains the essential primary constituent elements for the conservation of the species. The unit is authorized for development under the Shadow Canyon HCP. Impacts to the endangered golden-cheeked warbler (*Dendroica chrysoparia*) and Bone Cave harvestman (*Texella reyesi*) are permitted; however, impacts to Georgetown salamander are not covered under the HCP.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and depletion of groundwater (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 14: San Gabriel Springs Unit

Unit 14 consists of 68 ac (28 ha) of City of Georgetown land in west-central Williamson County, Texas. The unit is located between North College Street and East Morrow Street, just north of the San Gabriel River in San Gabriel Park. The northern part of the unit contains some park buildings, parking lots, and other impervious surfaces, but only the subterranean aquifer that extends below these structures is included in the critical habitat unit. The southern part of the unit is primarily undeveloped. This unit contains San Gabriel Springs, which is occupied by the Georgetown salamander. Even though the species has not been collected on the surface there since 1991 (Chippindale *et al.* 2000, p. 40; Pierce 2011b, pers. comm.), it may occur on the subsurface. Therefore, we consider this unit to be currently occupied. The spring is located just off the main channel of the San Gabriel River, downstream of the confluence of the North San Gabriel and South San Gabriel rivers. A city well is located approximately 82 ft (25 m) from one of the spring outlets, and causes the spring to go dry when it is active during the summer (TPWD 2011a, p. 9). The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed and depletion of groundwater from pumping (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Salado Salamander

Unit 1: Hog Hollow Spring Unit

Unit 1 consists of 68 ac (28 ha) of private land located in southwestern Bell County, Texas. The unit is primarily undeveloped ranch land. This unit contains Hog Hollow Spring, which is occupied by the Salado salamander. The unit is located on a tributary to Rumsey Creek in the Salado Creek drainage and contains the primary constituent elements essential for the conservation of the species. The owners of the spring are interested in conserving the species, but there are currently no long-term commitments to conservation in place.

The unit requires special management because of the potential for groundwater pollution from future development in the watershed, destruction of habitat by feral hogs, future depletion of groundwater, and disturbance of habitat by livestock (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 2: Solana Spring #1 Unit

Unit 2 consists of 68 ac (28 ha) of private land located in southwestern Bell County, Texas. The unit is primarily undeveloped ranch land. This unit contains Solana Spring #1, which is occupied by the Salado salamander. The unit is located on a tributary to Rumsey Creek in the Salado Creek drainage and contains the primary constituent elements essential for the conservation of the species. The owners of the spring are interested in conserving the species, but there are currently no long-term commitments to conservation in place.

The unit requires special management because of the potential for groundwater pollution from future development in the watershed, destruction of habitat by feral hogs, future depletion of groundwater, and disturbance of habitat by livestock (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 3: Cistern Spring Unit

Unit 3 consists of 68 ac (28 ha) of private land located in southwestern Bell County, Texas, on the same private ranch as Units 1 and 2 for the Salado salamander. The unit is primarily undeveloped ranch land. This unit contains Cistern Spring, which is occupied by the Salado salamander. The unit is located on a tributary to Rumsey Creek in the Salado Creek drainage and contains the primary constituent elements essential for the conservation of the species. The owners of the spring are interested in conserving the species, but there are currently no long-term commitments to conservation in place.

The unit requires special management because of the potential for groundwater

pollution from future development in the watershed, destruction of habitat by feral hogs, future depletion of groundwater, and disturbance of habitat by livestock (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 4: IH-35 Unit

Unit 4 consists of 168 ac (68 ha) of private, State, and City of Salado land located in southwestern Bell County, Texas, in the southern part of the Village of Salado. The unit extends along Salado Creek on both sides of Interstate Highway 35 (IH 35). The IH 35 right of way crosses Salado Creek and is owned by the Texas Department of Transportation. The unit is a mixture of residential and commercial properties on its eastern portion, with some undeveloped ranch land in the western part west of IH 35. This unit contains four springs, all located on private property: Robertson Spring, Big Boiling Spring, Lil' Bubbly Spring, and Lazy Days Fish Farm, all known to be occupied by the Salado salamander.

There has been some recent modification to the spring habitat within this unit. In the fall of 2011, the outflow channels and edges of Big Boiling and Lil' Bubbly Spring were reconstructed with large limestone blocks and mortar. In addition, in response to other activity in the area, the U.S. Army Corps of Engineers issued a cease and desist order to the Salado Chamber of Commerce in October 2011, for unauthorized discharge of dredged or fill material that occurred in this area (Brooks 2011, U.S. Corps of Engineers, pers. comm.). This order was issued in relation to the need for a section 404 permit under the Clean Water Act. A citation from a TPWD game warden was also issued in October 2011, due to the need for a sand and gravel permit from the TPWD for work being conducted within TPWD jurisdiction (Heger 2012a, pers. comm.). The citation was issued because the Salado Chamber of Commerce had been directed by the game warden to stop work within TPWD's jurisdiction, which the Salado Chamber of Commerce did temporarily, but work started again in spite of the game warden's directive (Heger 2012a, pers. comm.). A sand and gravel permit was obtained on March 21, 2012. The spring run modifications were already completed by this date, but further

modifications in the springs were prohibited by the permit. Additional work on the bank upstream of the springs was permitted and completed (Heger 2012b, pers. comm.).

The unit requires special management to protect it from illegal dumping within the stream channel, surface runoff from nearby roads and other development, the potential for groundwater pollution from future development in the watershed, future depletion of groundwater, and habitat disturbance from livestock and feral hogs (see *Special Management Considerations or Protection* section).

The proposed designation includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around each of the four springs, representing the extent of the subterranean critical habitat. We then joined the edges of the resulting circles.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the

responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate

consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the four salamander species. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the four salamander species. These activities include, but are not limited to:

(1) Actions that would physically disturb the spring habitat upon which these four Texas salamander species depend. Such activities could include, but are not limited to, channelization and other activities that result in the physical destruction of habitat or the modification of habitat so that it is not suitable for the species.

(2) Actions that would increase the concentration of silt in the surface or subsurface habitat. Such activities could include, but are not limited to, increases in impervious cover in the surface watershed, improper erosion controls on the surface and subsurface watersheds, release of pollutants into the surface water or connected groundwater at a

point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the four Texas salamander species and result in direct or cumulative adverse effects to these individuals and their life cycles.

(3) Actions that would deplete the aquifer to an extent that decreases or stops the flow of occupied springs or that reduce the quantity of subterranean habitat used by the species. Such activities could include, but are not limited to, excessive water withdrawals from aquifers and channelization or other modification of recharge features that would decrease recharge. These activities could dewater habitat or cause reduced water quality to levels that are beyond the tolerances of the four Texas salamanders and result in direct or cumulative adverse effects to these individuals and their life cycles.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- (1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- (2) A statement of goals and priorities;
- (3) A detailed description of management actions to be implemented to provide for these ecological needs; and
- (4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not

designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other

things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the four central Texas salamanders, the benefits of critical habitat include public awareness of Austin blind salamander, Georgetown salamander, Jollyville Plateau salamander, and Salado salamander presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for Austin blind salamander, Georgetown salamander, Jollyville Plateau salamander, and Salado salamander due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a

variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat

will result in extinction, we will not exclude it from the designation.

Based on the information that will be provided by entities seeking exclusion, as well as any additional public comments we receive during the open public comment period (see **DATES**), we will evaluate whether certain lands in the proposed critical habitat for Jollyville Plateau salamander in the Bull Creek 3 Unit (Unit 19 for the Jollyville Plateau salamander) are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

After considering the following areas under section 4(b)(2) of the Act, we are proposing to exclude them from the critical habitat designation for Jollyville Plateau salamander.

TABLE 11—AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT FOR THE JOLLYVILLE PLATEAU SALAMANDER

Unit	Specific area	Areas meeting the definition of critical habitat, in acres (hectares)	Areas considered for possible exclusion, in acres (hectares)
Unit 19: Bull Creek 3 Unit	Four Points HCP	254 ac (103 ha)	152 ac (62 ha).

We are considering these areas for exclusion, because we believe that:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, or

(2) They are appropriate for exclusion under the “other relevant factor” provisions of section 4(b)(2) of the Act.

However, we specifically solicit comments on the inclusion or exclusion of such areas. In the paragraphs below, we provide a detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

Sectors that may be affected by the proposed designation include private developers of residential and commercial property; city, county, and State governments that construct and maintain roads and other infrastructure;

and entities that pump water from the aquifers.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://www.regulations.gov>, or by contacting the Austin Ecological Services Field Office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation

of critical habitat for Austin blind salamander, Georgetown salamander, Jollyville Plateau salamander, and Salado salamander are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also

consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We believe that the Four Points HCP fulfills the above criteria, and are considering the exclusion of non-Federal lands covered by this plan that provide for the conservation of Jollyville Plateau salamander. We are requesting comments on the benefit to Jollyville Plateau salamander from this HCP.

Four Points Habitat Conservation Plan

The Permittee (TPG Four Points Land, L.P.) is authorized to “take” (kill, harm, or harass) the golden-cheeked warbler, black-capped vireo, Tooth Cave ground beetle, Bone Cave harvestman, Bee Creek Cave harvestman, Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Tooth Cave spider (*Tayshaneta myopica*), Kretschmar Cave mold beetle (*Texamaurops reddelli*), and the Coffin Cave mold beetle (*Batrissodes texanus*) at a known location (the 333-ac (135-ha) Four Points Property, located approximately 11 mi (18 km) northwest of Austin near the intersection of RM 2222 and RM 620, Travis County, Texas), of habitat for these species, incidental to activities necessary for the construction of mixed use real estate development projects and attendant utilities as described in the original Permittee’s (P-WB Joint Venture) application and habitat conservation plan. The HCP also covers the Jollyville Plateau salamander as if it were a listed species, meaning that impacts to this salamander species from construction activities described in the permit are permitted.

The HCP requires avoidance of direct impacts to warblers by not conducting clearing or construction in occupied

golden-cheeked warbler habitat and by initiating clearing and construction only during times of year when birds are not present. Approximately 52 ac (21 ha) that contains six caves (Owl Eyes, Japygid, Eluvial, Fernpit, M.W.A., and Jollyville) known to be inhabited by Tooth Cave ground beetle and the Bone Cave harvestman have been permanently preserved.

Protection of this area is also expected to contribute to the maintenance of water quality, and, therefore, the quality of salamander habitat at resurgence springs (Spring No. 12, Spring No. 22, and Spring No. 24) down-gradient of the preserve area. In addition, runoff from multi-family residential areas and the hotel will be routed to avoid drainages which contain springs known to support Jollyville Plateau salamanders.

In addition to the karst preserve, another approximately 135 ac (54 ha) of the property was permanently set aside and maintained as a golden-cheeked warbler preserve.

All preserve areas will be permanently fenced and posted to preclude public access, and red imported fire ants (*Solenopsis invicta*) will be controlled in the karst preserves. Fire ants are a pervasive, nonnative ant species originally introduced to the United States from South America over 50 years ago and are an aggressive predator and competitor that has spread across the southern United States. They often replace native species, and evidence shows that overall arthropod diversity, as well as species richness and abundance, decreases in infested areas. Fire ants are spread by activities that accompany urbanization and that result in soil disturbance and disruption to native ant communities. As such, fire ants will be controlled by limiting these types of activities. No pesticides or herbicides will be used within preserve areas, and any pesticides or herbicides used within developed areas will be used according to the EPA label instructions.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination and critical habitat designation are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this

proposed listing and designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 et seq.), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare

and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than \$7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be both significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking

itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies which are not by definition small business entities. And as such, certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions.

We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use, because the majority of the lands we are proposing as critical habitat are privately owned, and do not have energy production or distribution. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support

Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because the proposed areas that cover small government jurisdictions are small, and there is little potential that the proposal would impose significant additional costs above those associated with the proposed listing of the species. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we will analyze the potential takings implications of designating critical habitat for the Austin blind salamander, Georgetown salamander, Jollyville Plateau salamander, and Salado salamander in a takings implications assessment. Following publication of this proposed rule, a draft economic analysis will be completed for the proposed designation. The draft economic analysis will provide the foundation for us to use in preparing a takings implications assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Texas. The designation of critical habitat in areas currently occupied by the Austin blind salamander, Georgetown salamander, Jollyville Plateau salamander, and Salado salamander may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of

the Austin blind salamander, Georgetown salamander, Jollyville Plateau salamander, and Salado salamander within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). The proposed designation of critical habitat for the four Texas salamanders is entirely within the 5th Circuit jurisdiction; therefore, we do not intend to prepare an environmental analysis in connection with this proposed critical habitat designation.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES**

section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for

healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no Tribal lands that are occupied by the four central Texas salamanders. Therefore, we are not proposing to designate critical habitat for the salamander species on Tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Austin Ecological Services Field Office, Arlington Ecological Services Field Office, and the Texas Fish and Wildlife Conservation Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding entries for “Salamander, Austin blind”, “Salamander, Georgetown”, “Salamander, Jollyville Plateau”, and “Salamander, Salado” in alphabetical order under AMPHIBIANS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *							
AMPHIBIANS							
* * * * *							
Salamander, Austin blind.	<i>Eurycea waterlooensis</i> .	U.S.A. (TX)	Entire	E	.....	17.95(d)	NA
Salamander, Georgetown.	<i>Eurycea naufragia</i>	U.S.A. (TX)	Entire	E	.....	17.95(d)	NA
Salamander, Jollyville Plateau.	<i>Eurycea tonkawae</i>	U.S.A. (TX)	Entire	E	.....	17.95(d)	NA
Salamander, Salado.	<i>Eurycea chisholmensis</i> .	U.S.A. (TX)	Entire	E	.....	17.95(d)	NA
* * * * *							

3. Amend § 17.95(d) by adding entries for “Austin Blind Salamander (*Eurycea waterlooensis*)”, “Georgetown Salamander (*Eurycea naufragia*)”, “Jollyville Plateau Salamander (*Eurycea tonkawae*)”, and “Salado Salamander (*Eurycea chisholmensis*)”, in the same alphabetical order in which the species appear in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Austin Blind Salamander (*Eurycea waterlooensis*)

(1) The critical habitat unit is depicted for Travis County, Texas, on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of Austin blind salamander consist of four components:

(i) *Water from the Barton Springs Segment of the Edwards Aquifer.* The groundwater must be similar to natural aquifer conditions both underground and as it discharges from natural spring outlets. Concentrations of water quality constituents that could have a negative impact on the salamander are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Austin blind salamander prey base). Hydrologic

regimes similar to the historical pattern of the specific sites are present, with at least temporal surface flow for spring sites and continuous flow for subterranean sites. The water chemistry must be similar to natural aquifer conditions, with temperatures between 67.8 and 72.3 °F (19.9 and 22.4 °C), dissolved oxygen concentrations between 5 and 7 milligrams per liter, and specific water conductance between 605 and 740 microsiemens per centimeter.

(ii) *Rocky substrate with interstitial spaces.* Rocks (boulders, cobble, or gravel) in the substrate of the salamander's surface aquatic habitat must be large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces should have minimal sedimentation.

(iii) *Aquatic invertebrates for food.* The spring and cave environments must be capable of supporting a diverse aquatic invertebrate community that includes crustaceans and insects.

(iv) *Subterranean aquifer.* During periods of drought or dewatering on the surface in and around spring sites, access to the subsurface water table

must be provided for shelter and protection.

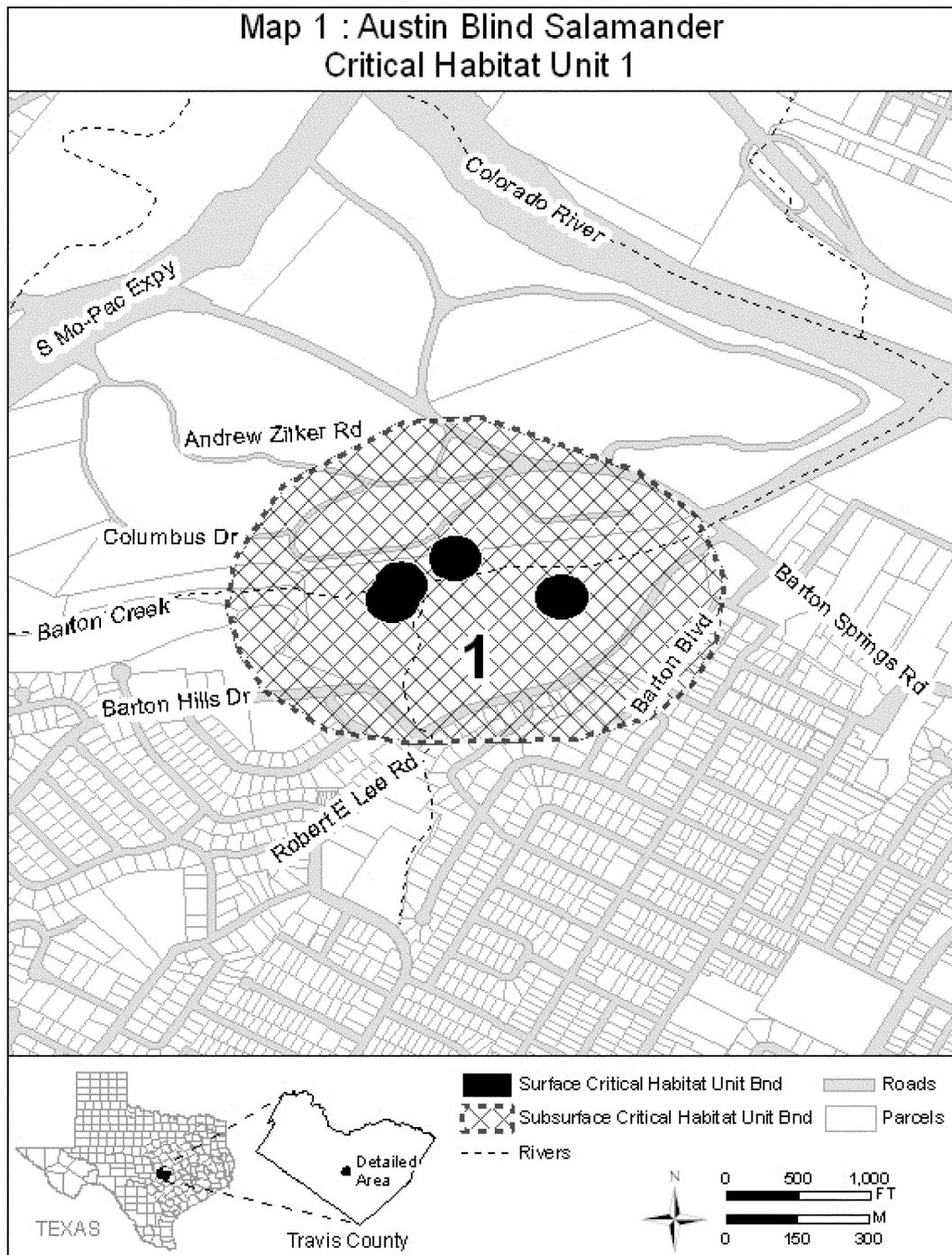
(3) Surface critical habitat includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat, but does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule; however, the subterranean aquifer may extend below such structures. The subterranean critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the springs.

(4) *Critical habitat map units.* Data layers defining map units were created using a geographic information system (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and USGS 7.5' quadrangles. Points were placed on the GIS. We delineated critical habitat unit boundaries by starting with the cave or spring point locations that are occupied by the salamanders. From these cave or springs points, we delineated a 984-ft (300-m) buffer to create the polygons that capture the extent to which we

believe the salamander populations exist through underground conduits. The polygons were then simplified to reduce the number of vertices, but still retain the overall shape and extent. Subsequently, polygons that were within 98 ft (30 m) of each other were merged together. Each new merged polygon was then revised to remove extraneous divits or protrusions that resulted from the merge process. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the field office Internet site (<http://www.fws.gov/southwest/es/AustinTexas/>), <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0035 and at the Service's Austin Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Unit 1: Barton Springs Unit, Travis County, Texas. Map of Unit 1 follows:

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* * * * *

Georgetown Salamander (*Eurycea naufragia*)

(1) Critical habitat units are depicted for Williamson County, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of Georgetown salamander consist of four components:

(i) *Water from the Northern Segment of the Edwards Aquifer.* The groundwater must be similar to natural aquifer conditions both underground and as it discharges from natural spring outlets. Concentrations of water quality constituents that could have a negative impact on the salamander should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the

Georgetown salamander prey base). Hydrologic regimes similar to the historical pattern of the specific sites must be present, with at least temporal surface flow for spring sites and continuous flow for subterranean sites. The water chemistry must be similar to natural aquifer conditions, with temperatures between 68.4 and 69.8 °F (20.2 and 21.0 °C), dissolved oxygen concentrations between 6 and 8 milligrams per liter, and specific water

conductivity between 604 and 721 microsiemens per centimeter.

(ii) *Rocky substrate with interstitial spaces.* Rocks (boulders, cobble, or gravel) in the substrate of the salamander's surface aquatic habitat must be large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces must have minimal sedimentation.

(iii) *Aquatic invertebrates for food.* The spring and cave environments must be capable of supporting a diverse aquatic invertebrate community that includes crustaceans and insects.

(iv) *Subterranean aquifer.* During periods of drought or dewatering on the surface in and around spring sites, access to the subsurface water table must be provided for shelter and protection.

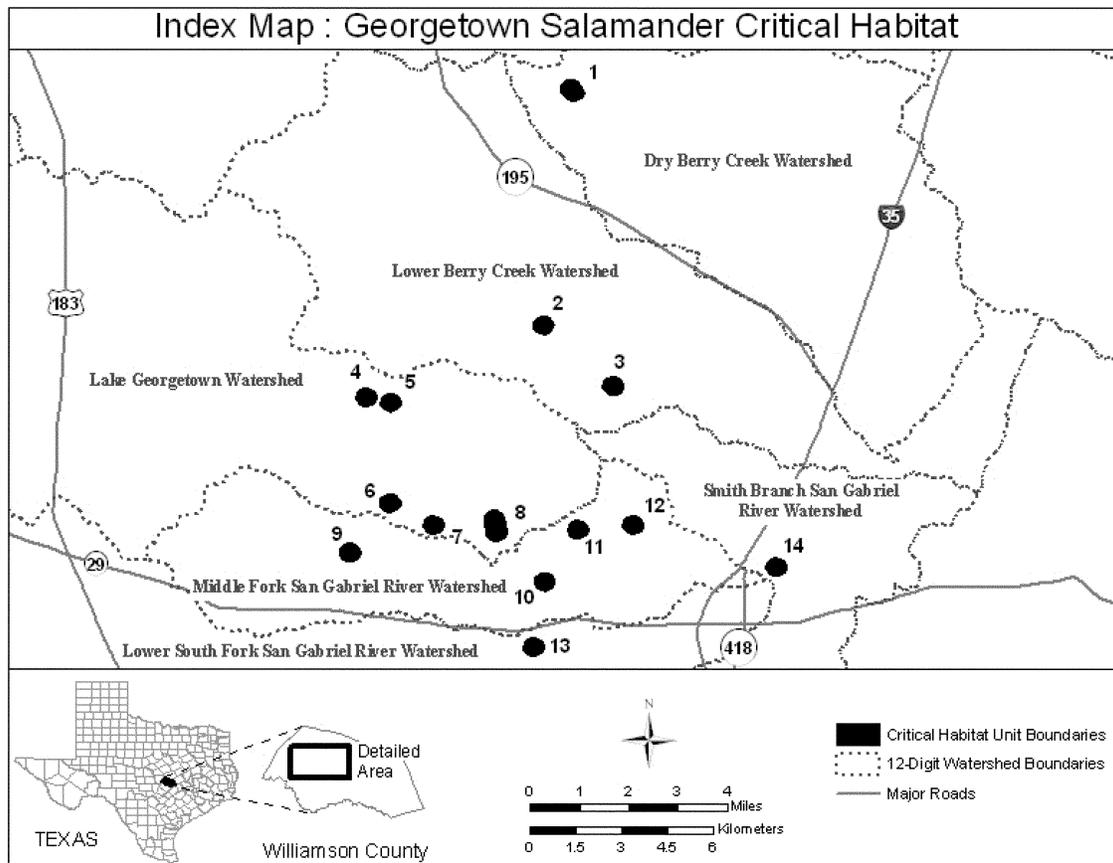
(3) Surface critical habitat includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat, but does not

include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule; however, the subterranean aquifer may extend below such structures. The subterranean critical habitat includes underground features in a circle with a radius of 984-ft (300-m) around the springs.

(4) *Critical habitat map units.* Data layers defining map units were created using a geographic information system (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and USGS 7.5' quadrangles. Points were placed on the GIS. We delineated critical habitat unit boundaries by starting with the cave or spring point locations that are occupied by the salamanders. From these cave or springs points, we delineated a 984 ft (300 m) buffer to create the polygons that capture the extent to which we believe the salamander populations

exist through underground conduits. The polygons were then simplified to reduce the number of vertices, but still retain the overall shape and extent. Subsequently, polygons that were within 98 ft (30 m) of each other were merged together. Each new merged polygon was then revised to remove extraneous divits or protrusions that resulted from the merge process. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the field office Internet site (at Docket No. FWS-R2-ES-2012-0035 and at the Service's Austin Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:



(6) Unit 1: Cobb Unit, Williamson County, Texas. Map of Unit 1 follows:



(7) Unit 2: Cowen Creek Spring Unit,
Williamson County, Texas. Map of
Units 2 and 3 follows:



(8) Unit 3: Bat Well Unit, Williamson County, Texas. Map of Units 2 and 3 is provided at paragraph (7) of this entry.

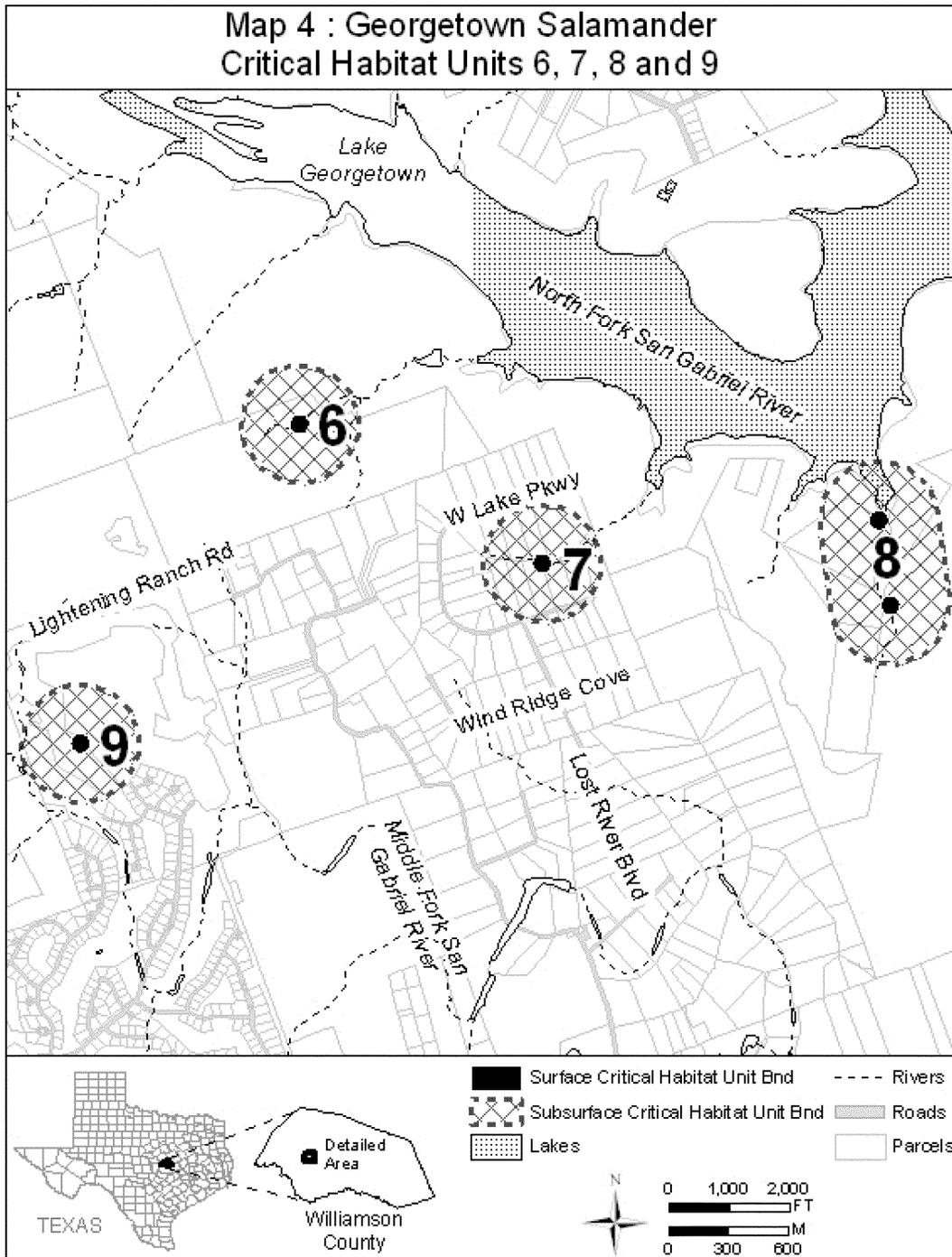
(9) Unit 4: Walnut Spring Unit, Williamson County, Texas. Map of Units 4 and 5 follows:



(10) Unit 5: Twin Springs Unit, Williamson County, Texas. Map of

Units 4 and 5 is provided at paragraph (9) of this entry.

(11) Unit 6: Hogg Hollow Spring Unit, Williamson County, Texas. Map of Units 6, 7, 8, and 9 follows:



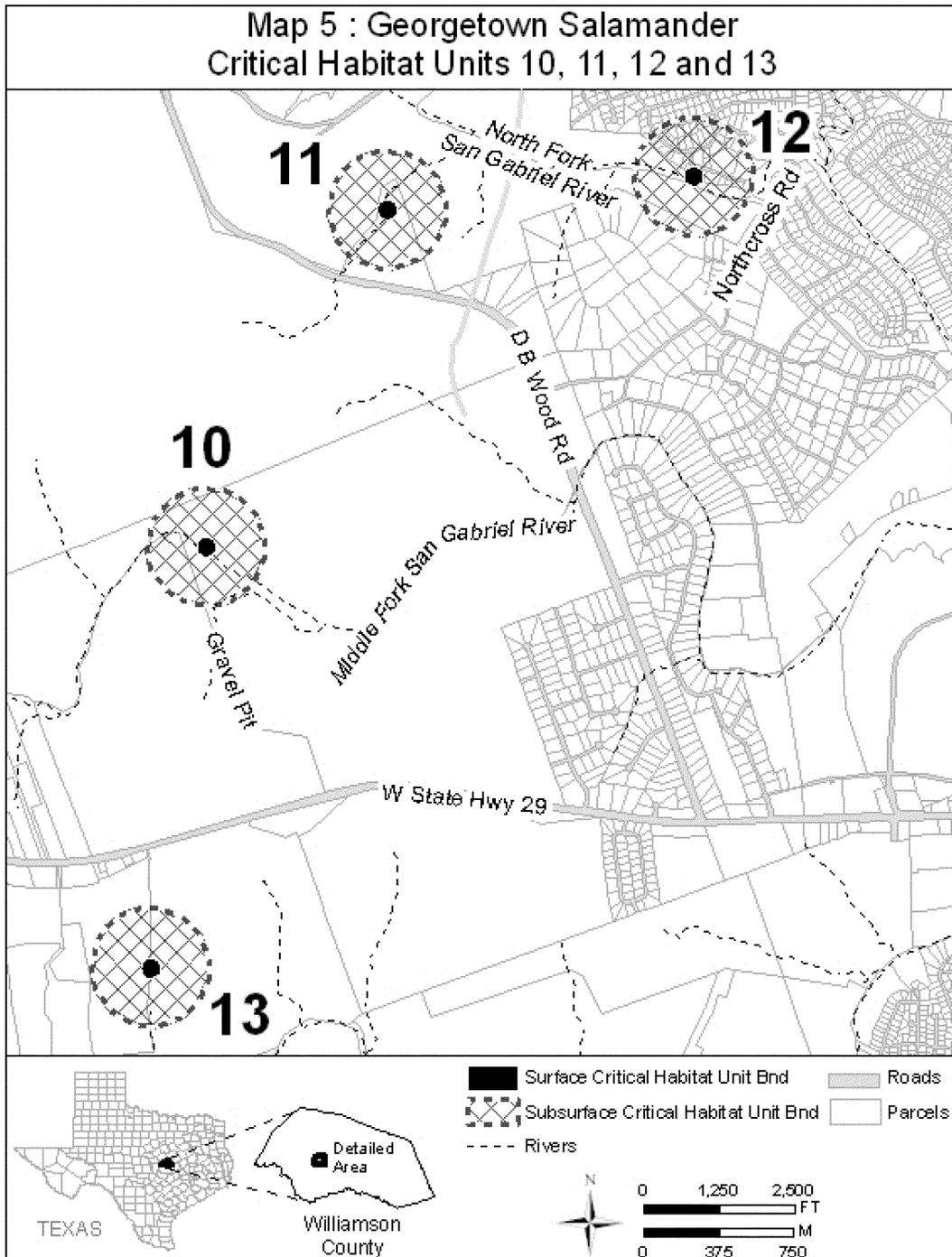
(12) Unit 7: Cedar Hollow Spring Unit, Williamson County, Texas. Map of Units 6, 7, 8, and 9 is provided at paragraph (11) of this entry.

(13) Unit 8: Lake Georgetown Unit, Williamson County, Texas. Map of

Units 6, 7, 8, and 9 is provided at paragraph (11) of this entry.

(14) Unit 9: Water Tank Cave Unit, Williamson County, Texas. Map of Units 6, 7, 8, and 9 is provided at paragraph (11) of this entry.

(15) Unit 10: Avant Spring Unit, Williamson County, Texas. Map of Units 10, 11, 12, and 13 follows:



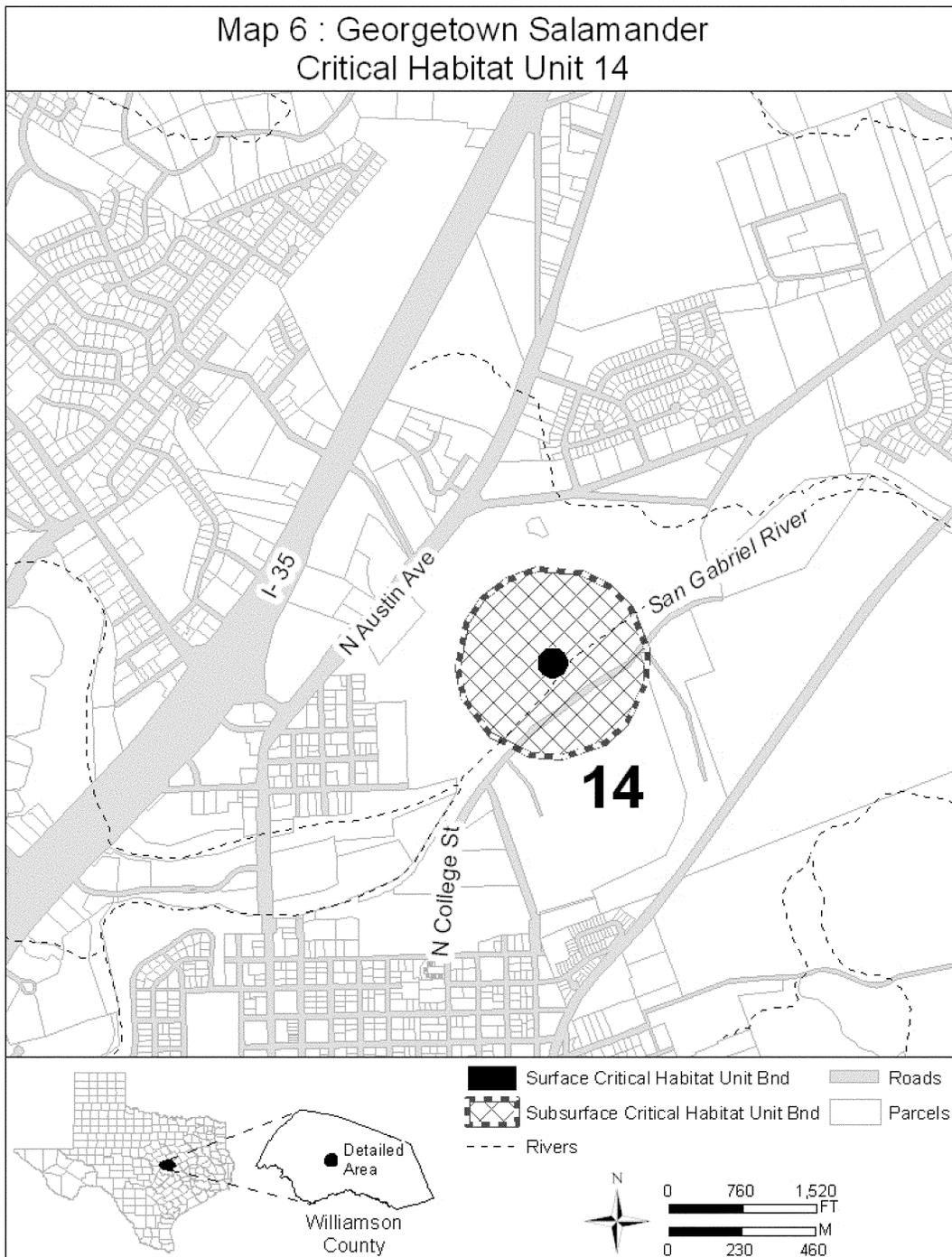
(16) Unit 11: Buford Hollow Spring Unit, Williamson County, Texas. Map of Units 10, 11, 12, 13 is provided at paragraph (15) of this entry.

(17) Unit 12: Swinbank Spring Unit, Williamson County, Texas. Map of

Units 10, 11, 12, and 13 is provided at paragraph (15) of this entry.

(18) Unit 13: Shadow Canyon Unit, Williamson County, Texas. Map of Units 10, 11, 12, and 13 is provided at paragraph (15) of this entry.

(19) Unit 14: San Gabriel Springs Unit, Williamson County, Texas. Map of Unit 14 follows:



Jollyville Plateau Salamander (*Eurycea tonkawae*)

(1) Critical habitat units are depicted for Travis and Williamson Counties, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of Jollyville Plateau salamander consist of four components:

(i) *Water from the Northern Segment of the Edwards Aquifer.* The groundwater must be similar to natural

aquifer conditions both underground and as it discharges from natural spring outlets. Concentrations of water quality constituents that could have a negative impact on the salamander should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Jollyville Plateau salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites

must be present, with at least temporal surface flow for spring sites and continuous flow in subterranean habitats. The water chemistry must be similar to natural aquifer conditions, with temperatures between 65.3 and 67.3 °F (18.5 and 19.6 °C), dissolved oxygen concentrations between 5.6 and 7.1 milligrams per liter, and specific water conductance between 550 and 625 microsiemens per centimeter.

(ii) *Rocky substrate with interstitial spaces.* Rocks (boulders, cobble, or

gravel) in the substrate of the salamander's surface aquatic habitat must be large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces must have minimal sedimentation.

(iii) *Aquatic invertebrates for food.* The spring and cave environments must be capable of supporting a diverse aquatic invertebrate community that includes crustaceans and insects.

(iv) *Subterranean aquifer.* During periods of drought or dewatering on the surface in and around spring sites, access to the subsurface water table must be provided for shelter and protection.

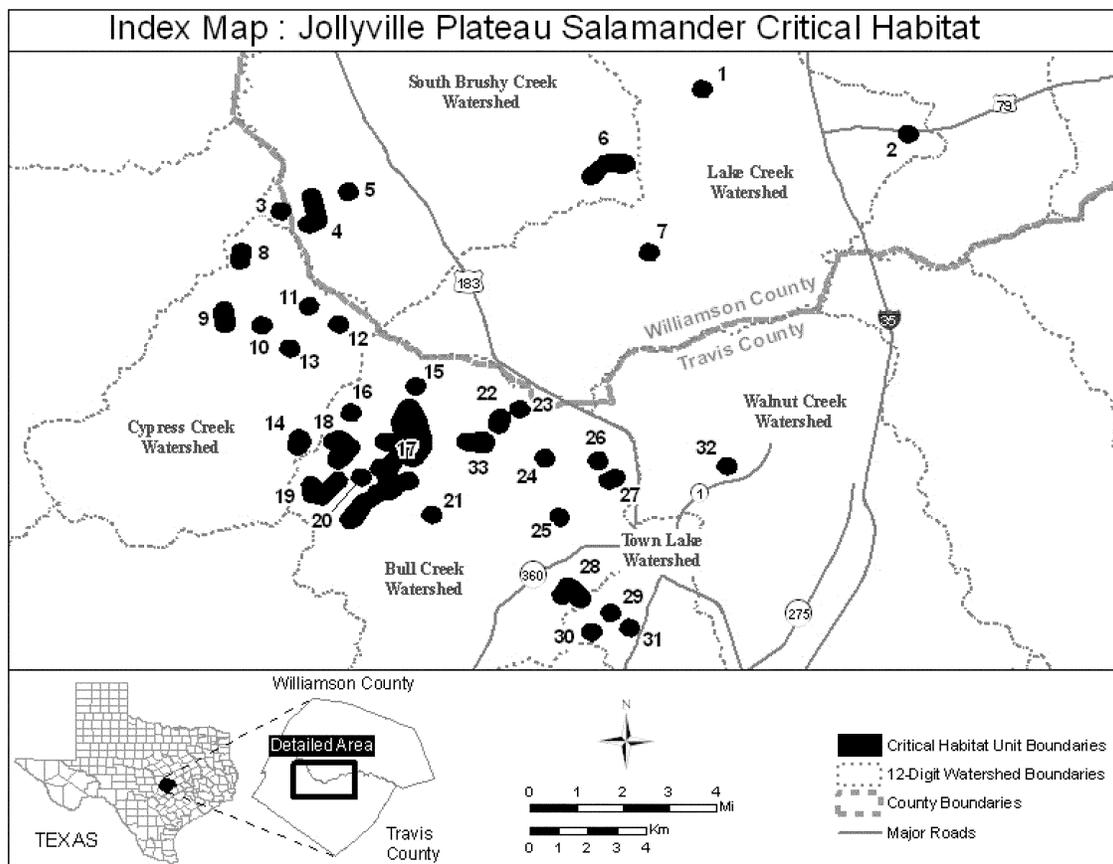
(3) Surface critical habitat includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat, but does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within

the legal boundaries on the effective date of this rule; however, the subterranean aquifer may extend below such structures. The subterranean critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the springs.

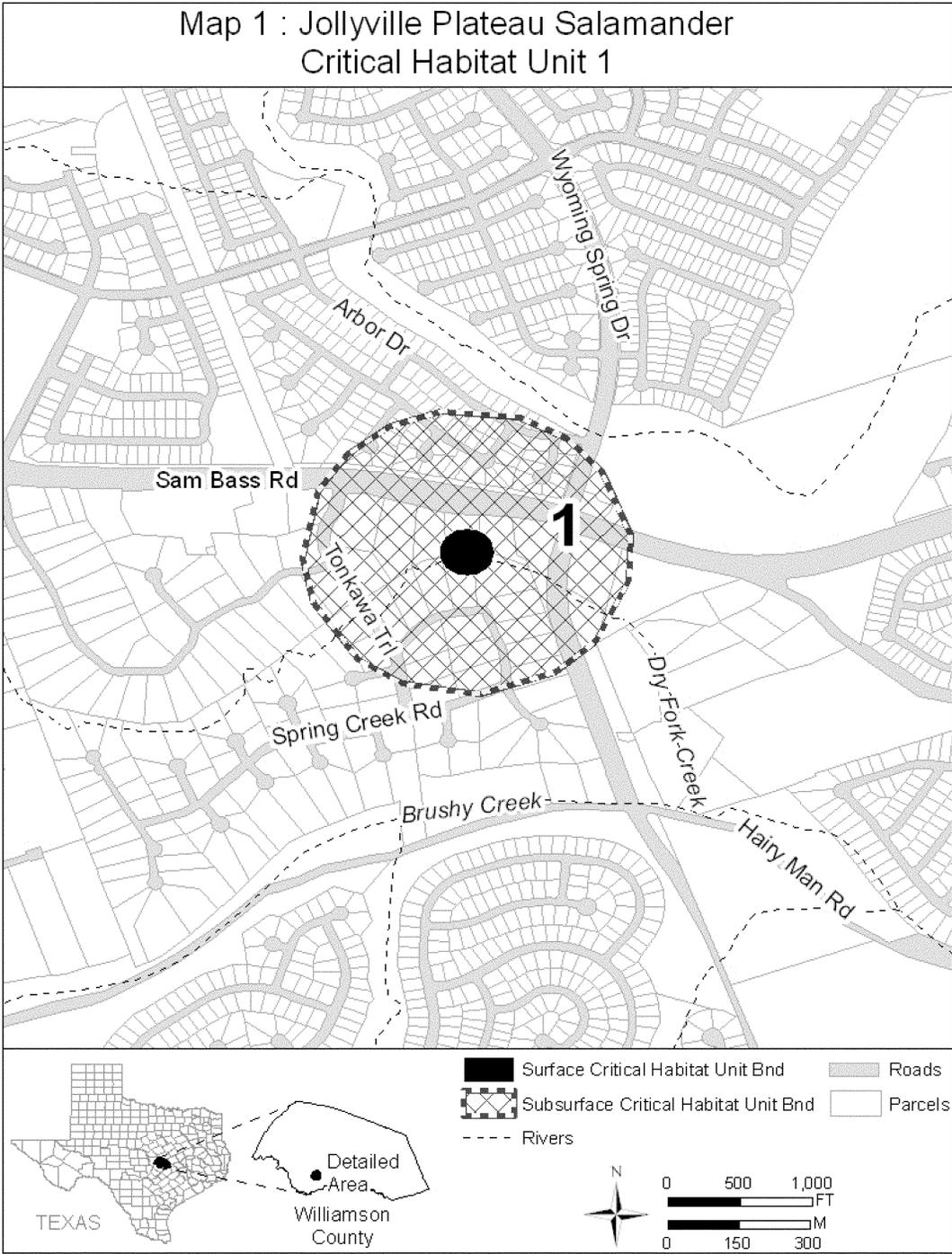
(4) *Critical habitat map units.* Data layers defining map units were created using a geographic information system (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and USGS 7.5' quadrangles. Points were placed on the GIS. We delineated critical habitat unit boundaries by starting with the cave or spring point locations that are occupied by the salamanders. From these cave or springs points, we delineated a 984-ft (300-m) buffer to create the polygons that capture the extent to which we believe the salamander populations exist through underground conduits. The polygons were then simplified to reduce the number of vertices, but still

retain the overall shape and extent. Subsequently, polygons that were within 98 ft (30 m) of each other were merged together. Each new merged polygon was then revised to remove extraneous divits or protrusions that resulted from the merge process. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the field office Internet site (<http://www.fws.gov/southwest/es/AustinTexas/>), <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0035 and at the Service's Austin Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

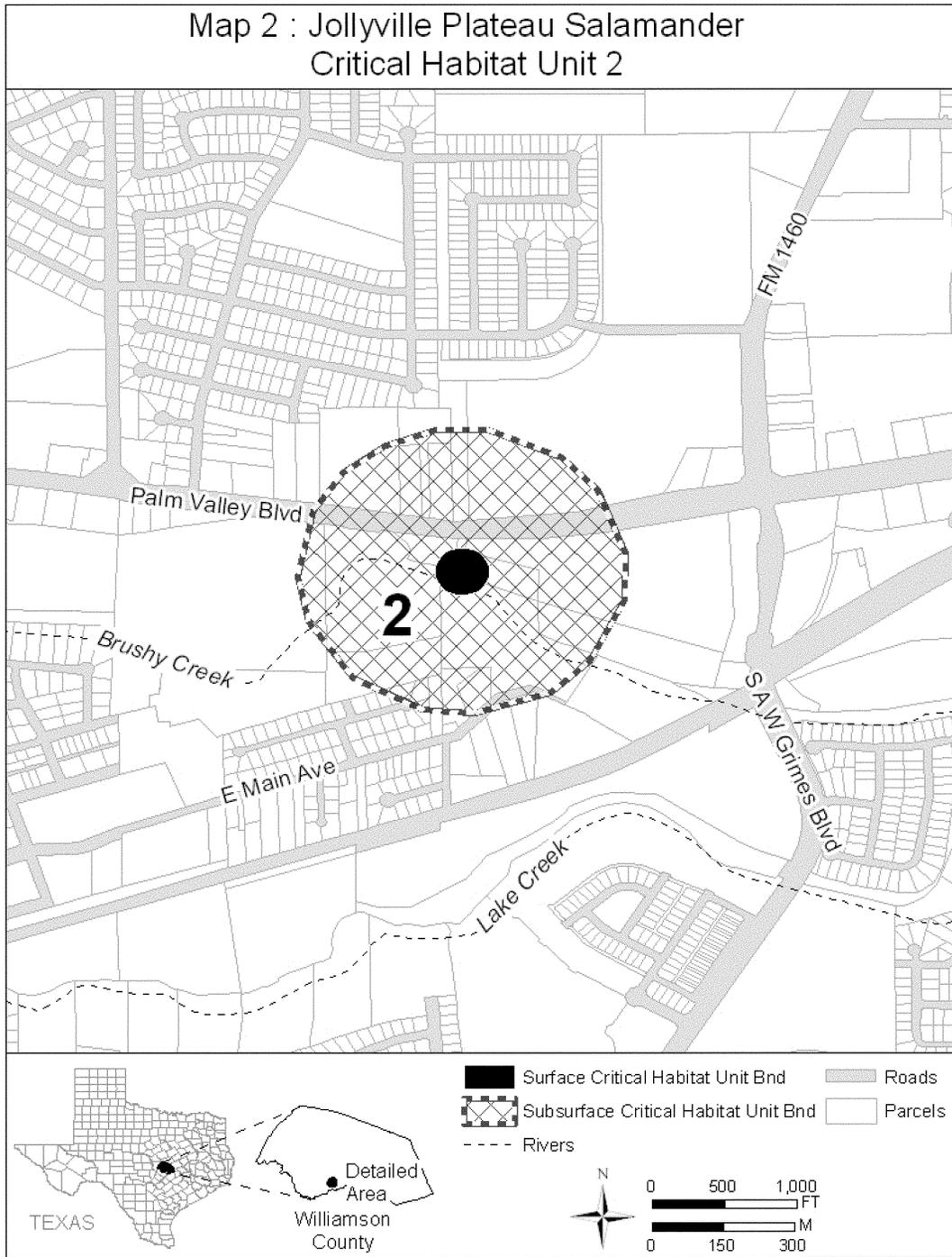
(5) Index map follows:



(6) Unit 1: Krienke Spring Unit, Williamson County, Texas. Map of Unit 1 follows:



(7) Unit 2: Brushy Creek Spring Unit, Williamson County, Texas. Map of Unit 2 follows:



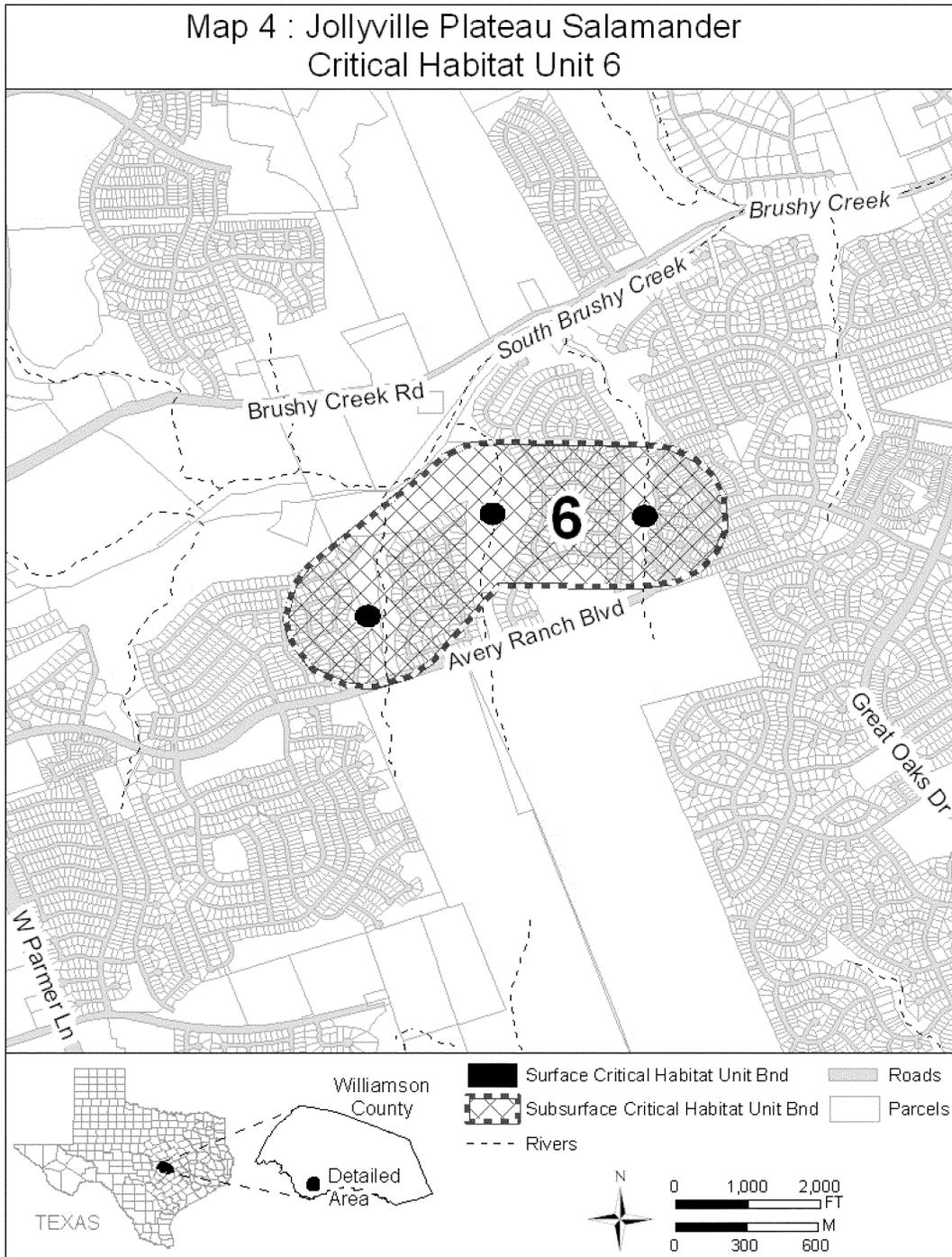
(8) Unit 3: Testudo Tube Cave Unit,
Williamson and Travis Counties, Texas.
Map of Units 3, 4, and 5 follows:



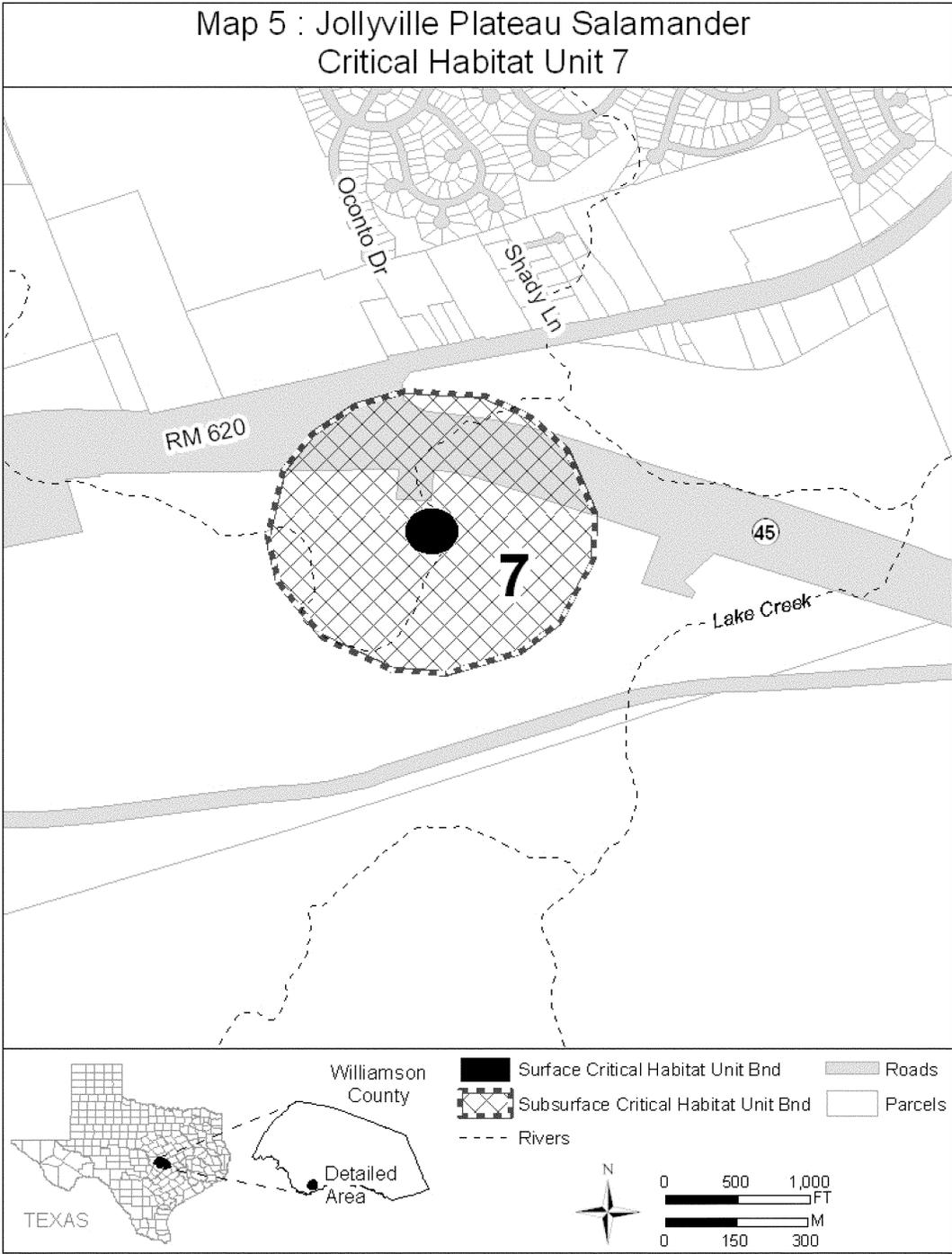
(9) Unit 4: Buttercup Creek Cave Unit, Travis and Williamson County, Texas. Map of Units 3, 4, and 5 is provided at paragraph (8) of this entry.

(10) Unit 5: Treehouse Cave Unit, Williamson County, Texas. Map of Units 3, 4, and 5 is provided at paragraph (8) of this entry.

(11) Unit 6: Avery Spring Unit, Williamson County, Texas. Map of Unit 6 follows:



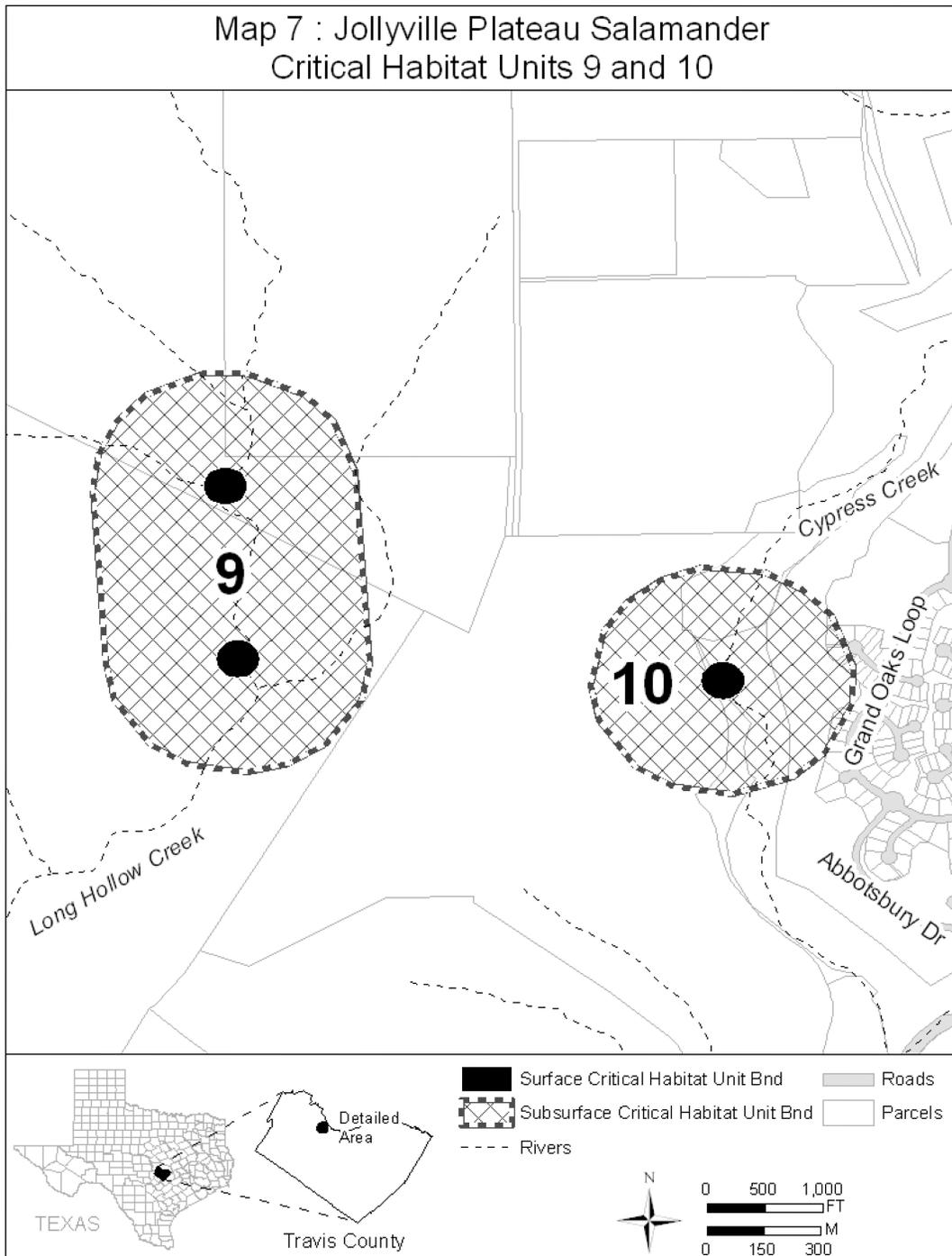
(12) Unit 7: PC Spring Unit,
Williamson County, Texas. Map of Unit
7 follows:



(13) Unit 8: Baker and Audubon
Spring Unit, Travis County, Texas, Map
of Unit 8 follows:



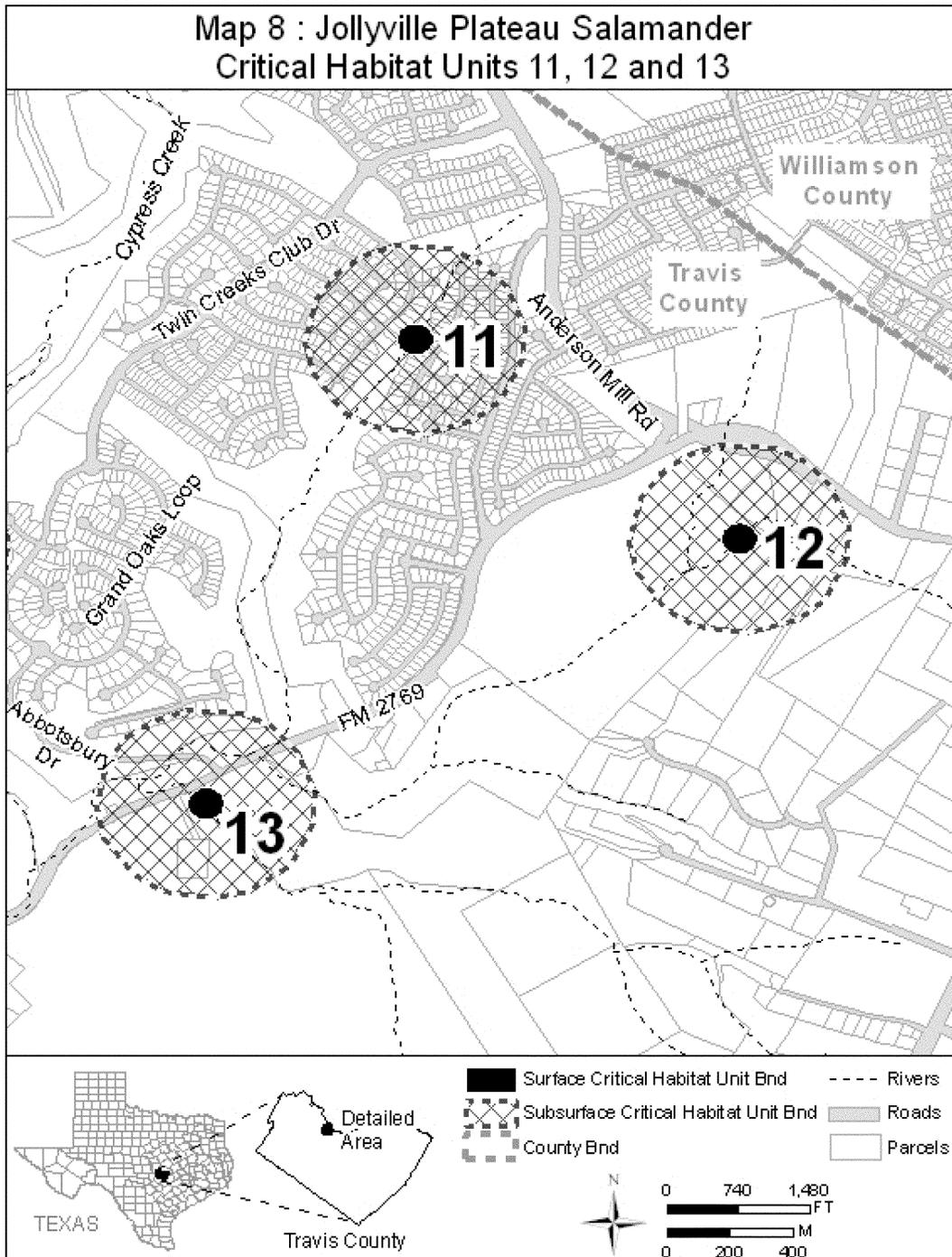
(14) Unit 9: Wheless Spring Unit,
Travis County, Texas. Map of Units 9
and 10 follows:



(15) Unit 10: Blizzard R-Bar-B Spring Unit, Travis County, Texas. Map of

Units 9 and 10 in provided at paragraph (14) of this entry.

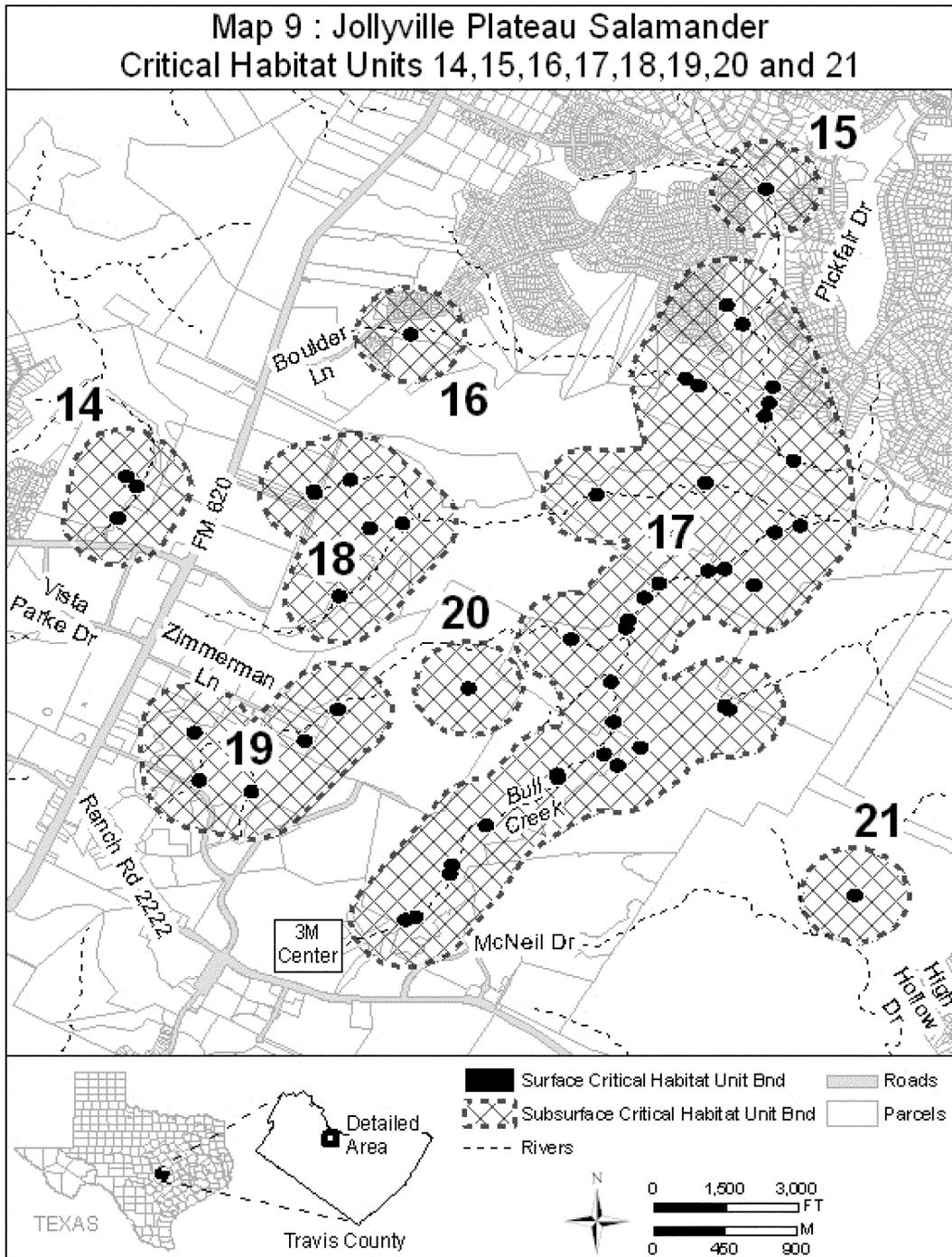
(16) Unit 11: House Spring Unit, Travis County, Texas. Map of Units 11, 12, and 13 follows:



(17) Unit 12: Kelly Hollow Spring Unit, Travis County, Texas. Map of Units 11, 12, and 13 is provided at paragraph (16) of this entry.

(18) Unit 13: MacDonald Well Unit, Travis County, Texas. Map of Units 11, 12, and 13 is provided at paragraph (16) of this entry.

(19) Unit 14: Kretschmarr Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 follows:



(20) Unit 15: Pope and Hiers Spring Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (19) of this entry.

(21) Unit 16: Fern Gully Spring Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (19) of this entry.

(22) Unit 17: Bull Creek 1 Unit, Travis County, Texas. Map of Units 14, 15, 16,

17, 18, 19, 20, and 21 is provided at paragraph (19) of this entry.

(23) Unit 18: Bull Creek 2 Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (19) of this entry.

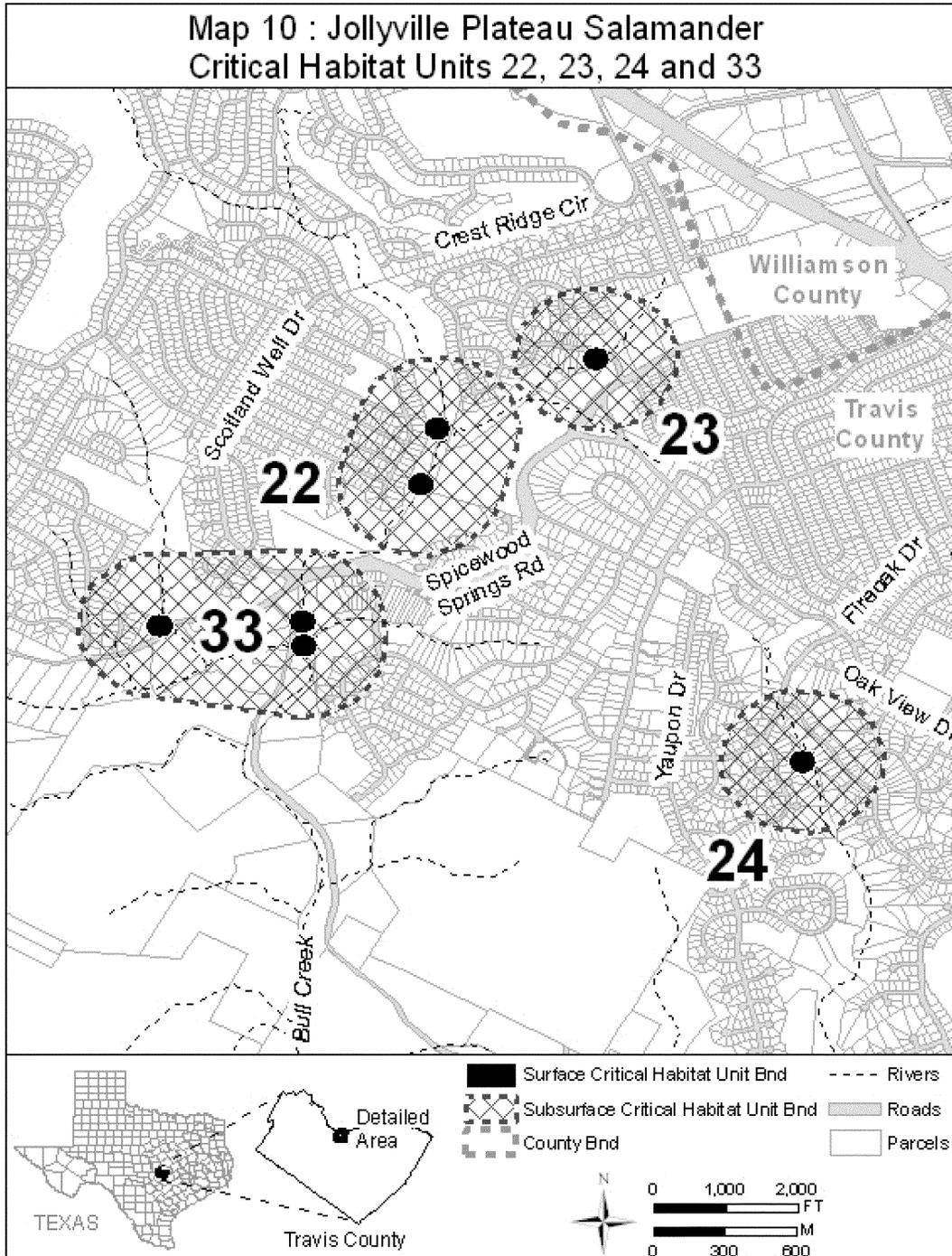
(24) Unit 19: Bull Creek 3 Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (19) of this entry.

(25) Unit 20: Moss Gully Spring Unit, Travis County, Texas. Map of

Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (19) of this entry.

(26) Unit 21: Ivanhoe Spring Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (19) of this entry.

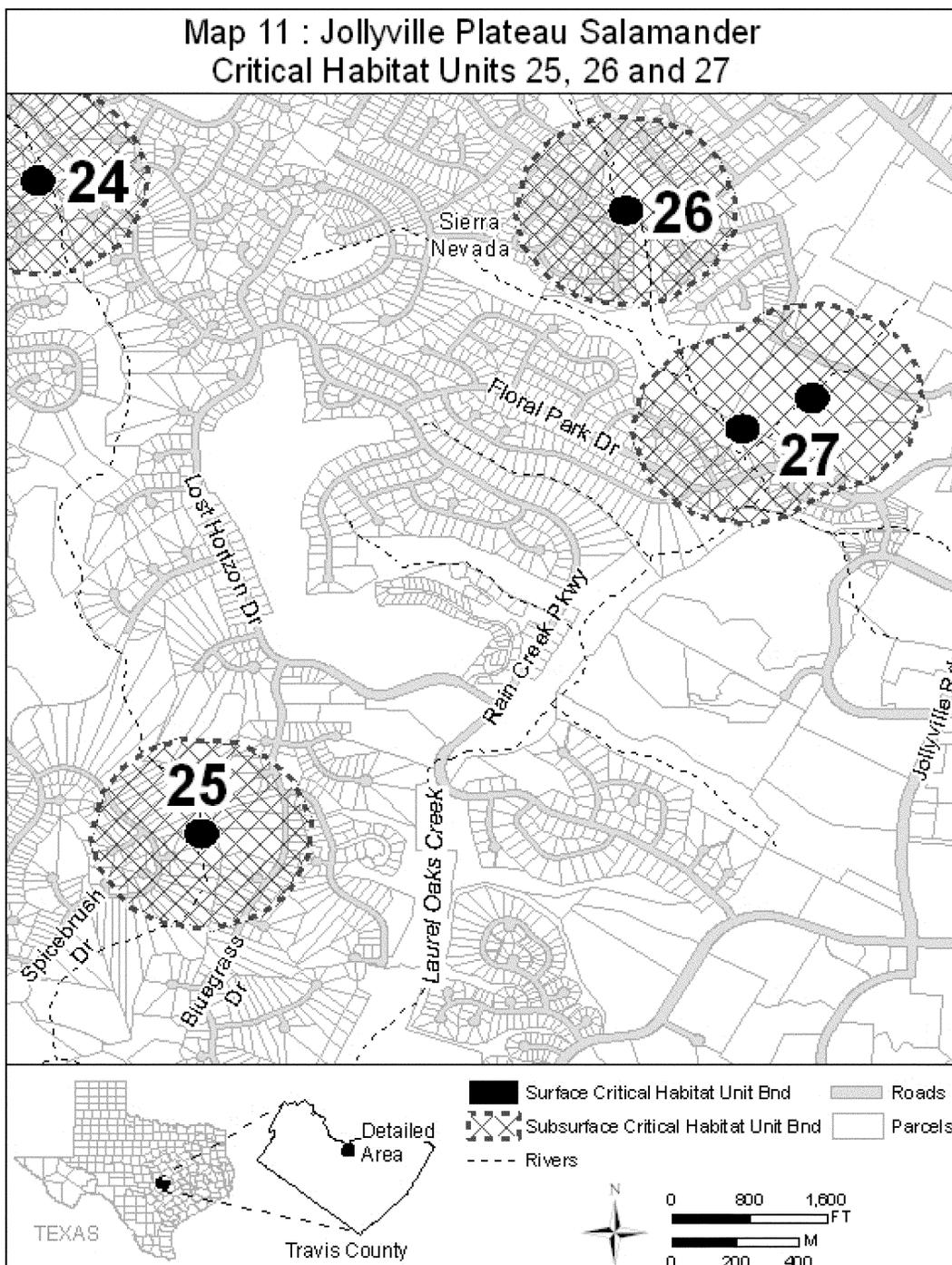
(27) Unit 22: Sylvia Spring Unit, Travis County, Texas. Map of Units 22, 23, 24, and 33 follows:



(28) Unit 23: Tanglewood Spring Unit, Travis County, Texas. Map of Units 22, 23, 24, and 33 is provided at paragraph (27) of this entry.

(29) Unit 24: Long Hog Hollow Unit, Travis County, Texas. Map of Units 22, 23, 24, and 33 is provided at paragraph (27) of this entry.

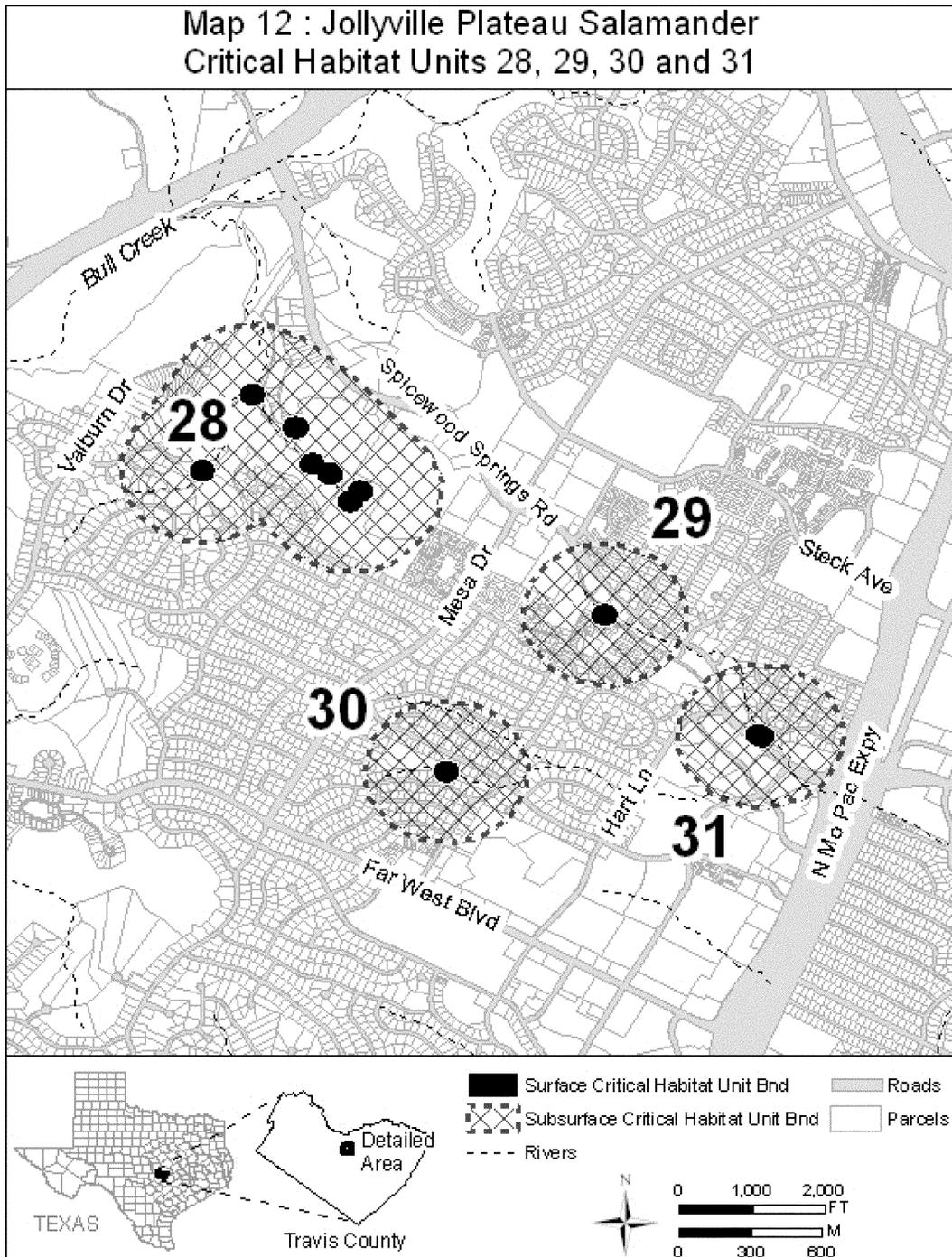
(30) Unit 25: Tributary 3 Unit, Travis County, Texas. Map of Units 25, 26, and 27 follows:



(31) Unit 26: Sierra Spring Unit, Travis County, Texas. Map of Units 25, 26, and 27 is provided at paragraph (30) of this entry.

(32) Unit 27: Troll Spring Unit, Travis County, Texas. Map of Units 25, 26, and 27 is provided at paragraph (30) of this entry.

(33) Unit 28: Stillhouse Unit, Travis County, Texas. Map of Units 28, 29, 30, and 31 follows:



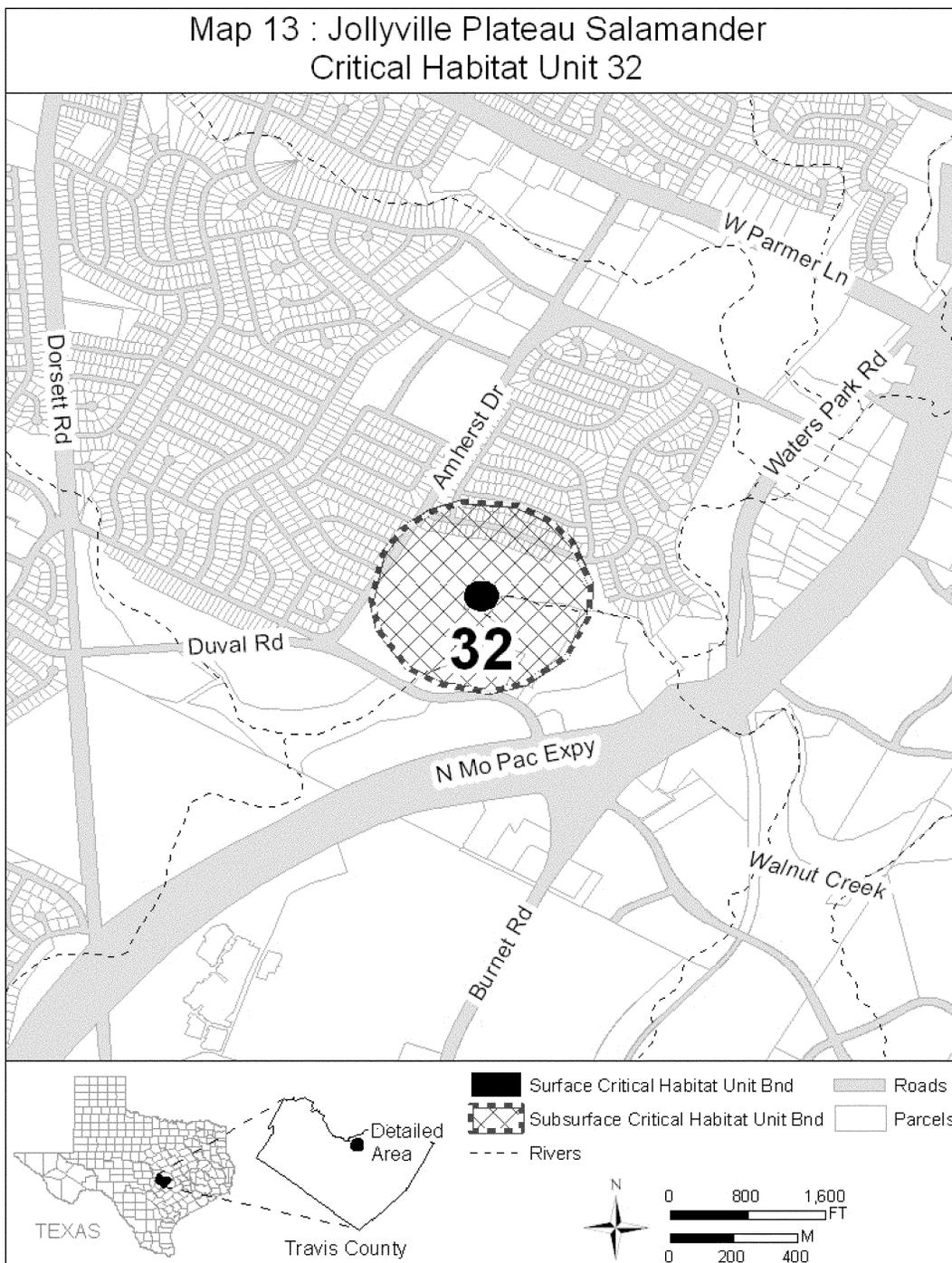
(34) Unit 29: Salamander Cave Unit, Travis County, Texas. Map of Units 28, 29, 30, 31 is provided at paragraph (33) of this entry.

(35) Unit 30: Indian Spring Unit, Travis County, Texas. Map of Units 28,

29, 30, and 31 is provided at paragraph (33) of this entry.

(36) Unit 31: Spicewood Spring Unit, Travis County, Texas. Map of Units 28, 29, 30, and 31 is provided at paragraph (33) of this entry.

(37) Unit 32: Balcones District Park Spring Unit, Travis County, Texas. Map of Unit 32 follows:



(38) Unit 33: Tributary 4 Unit, Travis County, Texas. Map of Units 22, 23, 24, and 33 is provided at paragraph (27) of this entry.

* * * * *

Salado Salamander (*Eurycea chisholmensis*)

(1) Critical habitat units are depicted for Bell County, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or

biological features essential to the conservation of Salado salamander consist of four components:

(i) *Water from the Northern Segment of the Edwards Aquifer.* The groundwater must be similar to natural aquifer conditions both underground and as it discharges from natural spring outlets. Concentrations of water quality constituents that could have a negative impact on the salamander should be below levels that could exert direct lethal or sublethal effects (such as

effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Salado salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites must be present, with at least temporal surface flow for spring sites and continuous flow for subterranean sites. The water chemistry must be similar to natural aquifer conditions, with temperatures between 65.3 and 69.8 °F (18.5 and 21.0 °C), dissolved oxygen

concentrations between 5.6 and 8 milligrams per liter, and conductivity between 550 and 721 microsiemens per centimeter.

(ii) *Rocky substrate with interstitial spaces.* Rocks (boulders, cobble, or gravel) in the substrate of the salamander's surface aquatic habitat must be large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces must have minimal sedimentation.

(iii) *Aquatic invertebrates for food.* The spring and cave environments must be capable of supporting a diverse aquatic invertebrate community that includes crustaceans and insects.

(iv) *Subterranean aquifer.* During periods of drought or dewatering on the surface in and around spring sites, access to the subsurface water table must be provided for shelter and protection.

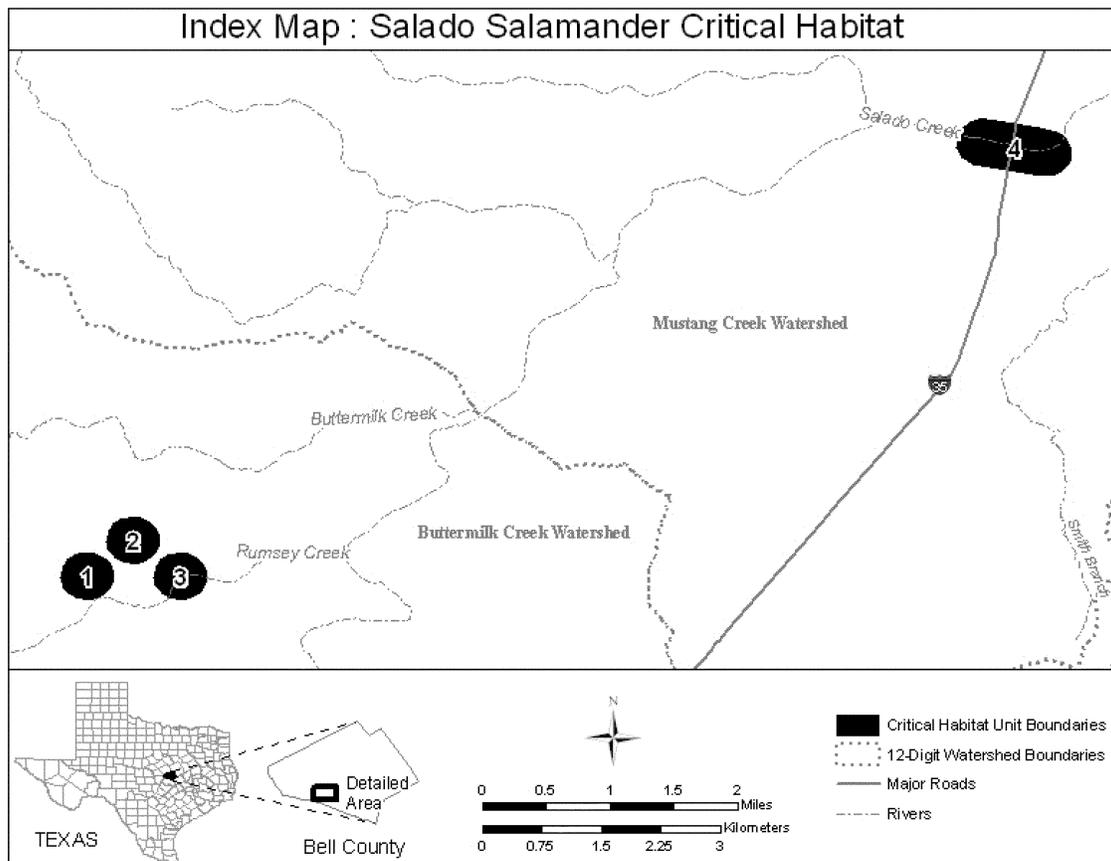
(3) Surface critical habitat includes the spring outlets and outflow up to the high water line and 164 ft (50 m) of downstream habitat, but does not

include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule; however, the subterranean aquifer may extend below such structures. The subterranean critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the springs.

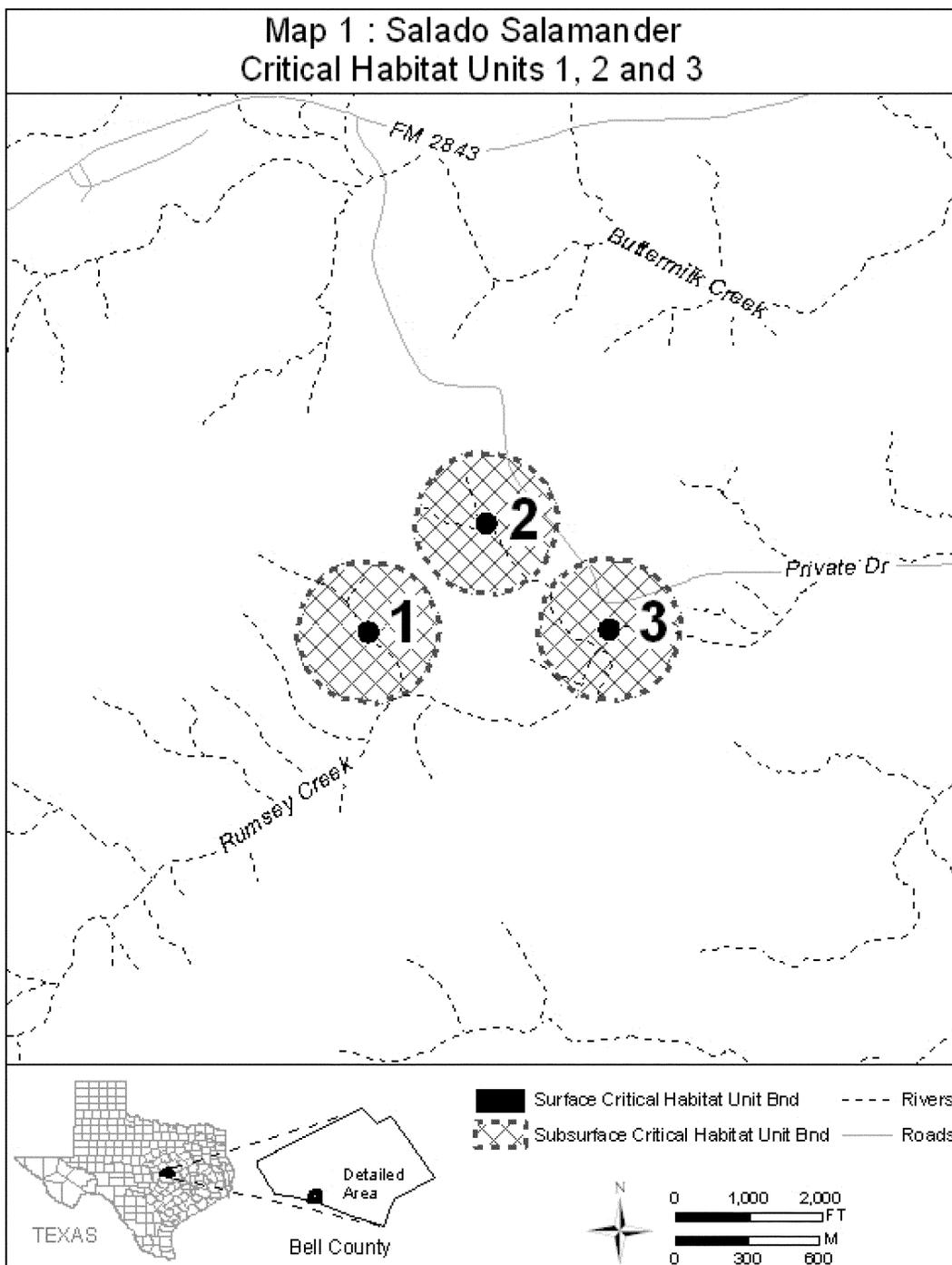
(4) *Critical habitat map units.* Data layers defining map units were created using a geographic information system (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and USGS 7.5' quadrangles. Points were placed on the GIS. We delineated critical habitat unit boundaries by starting with the cave or spring point locations that are occupied by the salamanders. From these cave or springs points, we delineated a 984-ft (300-m) buffer to create the polygons that capture the extent to which we believe the salamander populations exist through underground conduits.

The polygons were then simplified to reduce the number of vertices, but still retain the overall shape and extent. Subsequently, polygons that were within 98 ft (30 m) of each other where merged together. Each new merged polygon was then revised to remove extraneous divits or protrusions that resulted from the merge process. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the field office Internet site (<http://www.fws.gov/southwest/es/AustinTexas/>), <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0035 and at the Service's Austin Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:



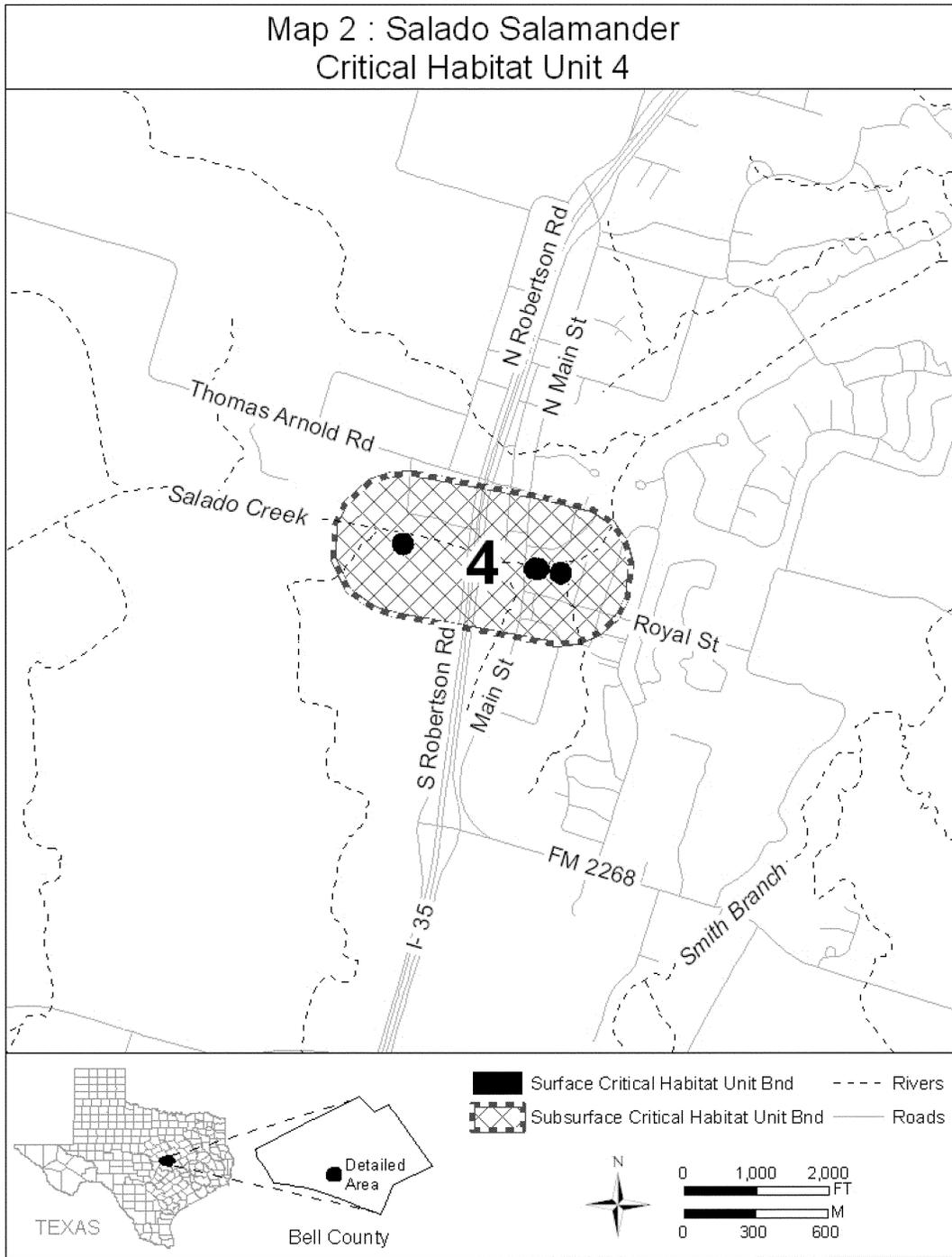
(6) Unit 1: Hog Hollow Spring Unit, Bell County, Texas. Map of Units 1, 2, and 3 follows:



(7) Unit 2: Solana Spring #1 Unit, Bell County, Texas. Map of Units 1, 2, and 3 is provided at paragraph (6) of this entry.

(8) Unit 3: Cistern Spring Unit, Bell County, Texas. Map of Units 1, 2, and 3 is provided at paragraph (6) of this entry.

(9) Unit 4: IH-35 Unit, Bell County, Texas. Map of Unit 4 follows:



* * * * *

Dated: July 31, 2012.
Rachel Jacobson,
*Principal Deputy Assistant Secretary for Fish
and Wildlife and Parks.*
[FR Doc. 2012-19659 Filed 8-21-12; 8:45 am]
BILLING CODE 4310-55-C



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August 22, 2012

Part III

Department of the Interior

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—
Increased Safety Measures for Energy Development on the Outer
Continental Shelf; Final Rule

DEPARTMENT OF THE INTERIOR**Bureau of Safety and Environmental Enforcement****30 CFR Part 250**

[Docket ID BSEE–2012–0002]

RIN 1014–AA02

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Increased Safety Measures for Energy Development on the Outer Continental Shelf

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Final rule.

SUMMARY: This Final Rule implements certain safety measures recommended in the report entitled, “Increased Safety Measures for Energy Development on the Outer Continental Shelf.” To implement the appropriate recommendations in the Safety Measures Report and DWH JIT report, BSEE is amending drilling, well-completion, well-workover, and decommissioning regulations related to well-control, including: subsea and surface blowout preventers, well casing and cementing, secondary intervention, unplanned disconnects, recordkeeping, and well plugging.

DATES: *Effective Date:* This rule becomes effective on October 22, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 22, 2012.

FOR FURTHER INFORMATION CONTACT: Kirk Malstrom, Bureau of Safety and Environmental Enforcement (BSEE), Office of Offshore Regulatory Programs, Regulations Development Branch, 703–787–1751, kirk.malstrom@bsee.gov.

Executive Summary

On October 14, 2010, the Bureau of Offshore Energy Management, Regulation, and Enforcement (BOEMRE) published the Interim Final Rule (75 FR 63346), “Increased Safety Measures for Energy Development on the Outer Continental Shelf.” The Interim Final Rule (IFR) addressed certain recommendations from the Secretary of the Interior to the President entitled, “Increased Safety Measures for Energy Development on the Outer Continental Shelf” (Safety Measures Report). The Bureau of Safety and Environmental Enforcement (BSEE) is publishing this Final Rule in response to comments on the requirements implemented in the IFR. This rulemaking:

- Establishes new casing installation requirements;
- Establishes new cementing requirements;
- Requires independent third party verification of blind-shear ram capability;
- Requires independent third party verification of subsea BOP stack compatibility;
- Requires new casing and cementing integrity tests;
- Establishes new requirements for subsea secondary BOP intervention;
- Requires function testing for subsea secondary BOP intervention;
- Requires documentation for BOP inspections and maintenance;
- Requires a Registered Professional Engineer to certify casing and cementing requirements; and
- Establishes new requirements for specific well control training to include deepwater operations.

This Final Rule changes the Interim Final Rule (IFR) in the following ways:

- Updates the incorporation by reference to the second edition of API Standard 65—Part 2, which was issued December 2010. This standard outlines the process for isolating potential flow zones during well construction. The new Standard 65—Part 2 enhances the description and classification of well-control barriers, and defines testing requirements for cement to be considered a barrier.
- Revises requirements from the IFR on the installation of dual mechanical barriers in addition to cement for the final casing string (or liner if it is the final string), to prevent flow in the event of a failure in the cement. The Final Rule provides that, for the final casing string (or liner if it is the final string), an operator must install one mechanical barrier in addition to cement, to prevent flow in the event of a failure in the cement. The final rule also clarifies that float valves are not mechanical barriers.
- Revises § 250.423(c) to require the operator to perform a negative pressure test only on wells that use a subsea blowout preventer (BOP) stack or wells with a mudline suspension system instead of on all wells, as was provided in the Interim Final Rule.
- Adds new § 250.451(j) stating that an operator must have two barriers in place before removing the BOP, and that the BSEE District Manager may require additional barriers.
- Extends the requirements for BOPs and well-control fluids to well-completion, well-workover, and decommissioning operations under Subpart E—Oil and Gas Well-Completion Operations, Subpart F—Oil and Gas Well-Workover Operations, and

Subpart Q—Decommissioning Activities to promote consistency in the regulations.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Background
- II. Source of Specific Provisions Addressed in the Final Rule
- III. Overview of the Interim Final Rule as Amended by This Rule
- IV. Comments Received on the Interim Final Rule
- V. Section-by-Section Discussion of the Requirements in Final Rule
- VI. Compliance Costs
- VII. Procedural Matters

I. Background

This Final Rule was initiated as an IFR published by the BOEMRE on October 14, 2010 (75 FR 63346). The IFR was effective immediately, with a 60-day comment period. On October 1, 2011, the BOEMRE, formerly the Minerals Management Service, was replaced by the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) as part of the reorganization. This Final Rule falls under the authority of BSEE and as such, a new Regulation Identifier Number (RIN) has been assigned to this rulemaking. The new RIN for this Final Rule is 1014–AA02, and replaces RIN 1010–AD68 from the IFR. This Final Rule modifies, in part, provisions of the IFR based on comments received. After reviewing the comments, however, BSEE retained many of the provisions adopted on October 14, 2010 without change.

Some revisions to the IFR herein are additionally noteworthy in that they respond to comments we received and/or are consistent as possible with recommendations in the Deepwater Horizon Joint Investigation Team (DWH JIT) report, to the degree that those recommendations are within the scope of the IFR or can be considered a logical outgrowth of the IFR. These changes include the following:

- Clarification that the use of a dual float valve is not considered a sufficient mechanical barrier.
- Clarification in § 250.443 stating that all BOP systems must include a wellhead assembly with a rated working pressure that exceeds the maximum anticipated wellhead pressure instead of the maximum anticipated surface pressure as was previously provided.
- In § 250.1500 revising the definition of well-control to clarify that persons performing well monitoring and maintaining well-control must be trained. This new definition encompasses anyone who has

responsibility for monitoring the well and/or maintaining the well-control equipment.

This Final Rule is promulgated for the prevention of waste and for the conservation of natural resources of the Outer Continental Shelf (OCS), under the rulemaking authority of the Outer Continental Shelf Lands Act (the Act), 43 U.S.C. 1334.

This rule is based on certain recommendations in the May 27, 2010, report from the Secretary of the Interior to the President entitled, "Increased Safety Measures for Energy Development on the Outer Continental Shelf" (Safety Measures Report). The President directed that the Department of the Interior (DOI) develop this report as a result of the Deepwater Horizon event on April 20, 2010. This event, which involved a blowout of the BP Macondo well and an explosion on the Transocean Deepwater Horizon mobile offshore drilling unit (MODU), resulted in the deaths of 11 workers, an oil spill of national significance, and the sinking of the Deepwater Horizon MODU. On June 2, 2010, the Secretary of the Interior directed BOEMRE to adopt the recommendations contained in the

Safety Measures Report and to implement them as soon as possible. As noted in the regulatory impact analysis accompanying this rule, other recommendations will be addressed in other future rulemakings and will be available for public comment. Final Regulatory Impact Analysis for the Final Rule on Increased Safety Measures for Energy Development on the Outer Continental Shelf, RIN 1014-AA02, at 9 (BSEE; March 7, 2012). Similarly, BSEE's actions here are not intended to supplant any actions by BSEE or other authorized government authorities warranted by fact finding or other factual development in other proceedings, including but not limited to those in Multi-District Litigation No. 2179, In Re: Oil Spill by the OIL RIG DEEPWATER HORIZON in the GULF OF MEXICO, on April 2010 (E.D. La.).

II. Source of Specific Provisions Addressed in the Interim Final Rule

The Safety Measures Report recommended a series of steps designed to improve the safety of offshore oil and gas drilling operations in Federal waters. It outlined a number of specific measures designed to ensure sufficient

redundancy in BOPs, promote well integrity, enhance well-control, and facilitate a culture of safety through operational and personnel management. The IFR addressed both new well bore integrity requirements and well-control equipment requirements. The well bore integrity provisions impose requirements for casing and cementing design and installation, tighter cementing practices, the displacement of kill-weight fluids, and testing of independent well barriers. These new requirements were intended to ensure that additional physical barriers exist in wells to prevent oil and gas from escaping into the environment. These new requirements related to well bore integrity were intended to decrease the likelihood of a loss of well-control. The well-control equipment requirements in the IFR help ensure the BOPs will operate in the event of an emergency and that the Remotely Operated Vehicles (ROVs) are capable of activating the BOPs.

The following provisions in the IFR were identified in the Safety Measures Report as being appropriate to implement through an emergency rulemaking:

Safety measures report provision	Interim final rule citations
Establish deepwater well-control procedure guidelines (safety report rec. II.A.1).	§ 250.442 What are the requirements for a subsea BOP system? § 250.515 Blowout prevention equipment. § 250.615 Blowout prevention equipment. §§ 250.1500 through 250.1510 Subpart O—Well-control and Production Safety Training.
Establish new fluid displacement procedures (safety report rec. II.A.2) Develop additional requirements or guidelines for casing installation (safety report rec. II.B.2.6).	§ 250.456 What safe practices must the drilling fluid program follow? § 250.423 What are the requirements for pressure testing casing?

BOEMRE also included the following provision in the IFR from the Safety Measures Report:

Safety measures report provision	Interim final rule
Enforce tighter primary cementing practices (safety report rec.II.B.3.7)	§ 250.415 What must my casing and cementing programs include?

BOEMRE determined that it was appropriate for inclusion in the IFR because it is consistent with the intent of the recommendations in the Safety Measures Report. Tighter requirements for cementing practices increase the safety of offshore oil and gas drilling operations.

Much of the October 14, 2010, **Federal Register** preamble supporting the need for emergency rulemaking procedures also supports retaining these provisions permanently.

III. Overview of the Interim Final Rule as Amended by This Rule

The primary purpose of this Final Rule is to address comments received, make appropriate revisions, and bring to closure the rulemaking begun by the IFR. Together, the two rules clarify and incorporate safeguards that will decrease the likelihood of a blowout during drilling, completion, workover, and abandonment operations on the OCS. For example, the safeguards address well bore integrity and well-

control equipment. In sum, the two rules:

- (1) Establish new casing installation requirements;
- (2) Establish new cementing requirements;
- (3) Require independent third-party verification of blind-shear ram capability;
- (4) Require independent third-party verification of subsea BOP stack compatibility;
- (5) Require new casing and cementing integrity tests;

- (6) Establish new requirements for subsea secondary BOP intervention;
- (7) Require function testing for subsea secondary BOP intervention;
- (8) Require documentation for BOP inspections and maintenance;
- (9) Require a Registered Professional Engineer to certify casing and cementing requirements; and
- (10) Establish new requirements for specific well-control training to include deepwater operations.

IV. Comments Received on the Interim Final Rule

Although the IFR was effective immediately upon publication in the **Federal Register**, the IFR included a request for public comments. BSEE received 38 comments on the IFR. The following table categorizes the commenters:

Commenter type	Number of comments
Oil and Gas Industry/Organizations	21
Other Non-Government Organizations	6
Individuals	8
Government Federal/State	3
Total	38

A number of comments included topics that were outside the scope of this rulemaking. Some provided suggestions for future rulemakings; other comments related to the

Deepwater Horizon event, speculating on the causes of the event and suggesting additional changes based on their understanding of that event. While we requested comments on future rulemakings, we are not specifically addressing those comments in this rule; we will however, consider those suggestions in related future rulemakings. To the degree that comments assert that compliance with current rules or standards incorporated by reference may be infeasible in certain situations, and that such provisions need to be revised, BSEE will examine the need to revise its rules. Pending any future revisions of such provisions, persons subject to compliance may seek BSEE approval of either alternative procedures or equipment under § 250.141 or departures from such requirements under § 250.142. In this Final Rule, BSEE only responds to comments that relate directly to this rulemaking. All comments BSEE received on the IFR are available at www.regulations.gov under Docket ID: BSEE-2012-0002.

BSEE received a number of comments asserting that in making the IFR effective immediately upon publication, we did not follow the appropriate rulemaking process as required by the Administrative Procedure Act (APA). BSEE disagrees with these comments. In issuing the IFR, BOEMRE followed procedures authorized under the APA at 5 U.S.C. 553(b) and (d). BOEMRE provided justification in the IFR for not

seeking public comment in advance, and for the immediate effective date. BSEE believes that the justification provided at that time was sufficient and will not repeat that justification here.

In this Final Rule, BSEE is publishing revisions to the IFR based on the comments we received. Analysis of the comments also confirms the agency's earlier conclusions regarding those portions of the IFR that are not modified in this Final Rule. To help organize and present the comments received and the BSEE response to the comments, BSEE has developed 3 separate tables. Except for one issue, the following three tables summarize the comments received, and contain BSEE's response to those comments. (Comments pertaining to the "should/must" issue related to § 250.198(a) are addressed in the section-by-section discussion with specific comments being addressed in a separate document included in the Administrative Record.) The first table relates to comments received on specific sections. The second table relates to broader topics and general questions not connected to a specific section. The third table addresses comments regarding the Regulatory Impact Analysis. Following the comment discussions, we include a section-by-section analysis of the Final Rule describing changes we made from the IFR. We do not repeat here the basis and purpose for each of the provisions of the sections retained from the IFR.

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES

Section—topic	Comment	BSEE response
§ 250.198(h)(79)—API Standard 65 2nd edition.	API Standard 65—Part 2, Isolating Potential Flow Zones During Well Construction, Second Edition was published on December 10, 2010. The Second Edition incorporates learnings from the Macondo well incident, enhances the description and classification of well-control barriers, and defines testing requirements for cement to be considered a barrier. The Second Edition also revises Annex D into a checklist based on the requirements of the document. BOEMRE should update the IFR to incorporate the 2nd Edition by reference.	BSEE has reviewed API Standard 65—Part 2 2nd edition and has determined that it is appropriate to incorporate the latest edition in our regulations.
§ 250.198(h)(79)—API Standard 65 2nd edition.	Provide clarification on how API RP 65-2 will be used; will a minimum pre-cementing score be required for each cement job and then evaluated after the job also? (or checklist if using the Second Edition).	BSEE developed a compliance table, based on API Standard 65—Part 2 (see Table 4) for guidance. This Final Rule does not require operators to use this table; however, the operator may answer the questions in the table, along with the written descriptions where needed, or the operator may supply a written description in an alternate format as required in § 250.415(f) which is submitted with the APD. If the operator does not supply enough information to confirm compliance, then BSEE may return the permit application for clarification. BSEE does not plan to use a scoring system; the operator must submit how it evaluated API Standard 65 part 2 when designing its cement program. The operator is not required to submit a post-cement job evaluation.
§ 250.415(f), § 250.416(e)	Will the submittal be with each APD, or once for each rig per year unless changed?	The operator is required to submit the written description of how the best practices in API Standard 65—Part 2 were evaluated and the qualifications of the independent third-party with each APD.

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
§ 250.416(d)	Confirm that the schematic of the control system includes location, control system pressure for BOP functions, BOP functions at each control station, and emergency sequence logic. Specifications on other requirements should be clear.	BSEE agrees that the schematics of the control systems should include these items. The location of control stations are not required to be submitted. While it is critical to have control stations, the actual location of the control stations is not critical.
§ 250.416(e)	Will there be a standard way to perform shearing calculations for the drill pipe?	BSEE does not require a standard method to perform shearing calculations; different manufacturers have different methods of calculating shearing requirements. The documentation the operator provides, however, needs to explain and support the methodology used in performing the calculations and arriving at the test results.
§ 250.416(e)	Will there be a standard of calculation for the Maximum Anticipated Surface Pressure (MASP)?	BSEE does not require a standard procedure for MASP or shearing calculations. In §250.413(f), MASP for drilling is defined along with the considerations for calculations.
§ 250.416(e)	Will the maximum MASP be the rating of the annulars?	The MASP for shearing calculations will not be based on the annular rating. There are multiple methods to calculate the MASP. It is the responsibility of the operator to select the appropriate method, depending upon the situation.
§ 250.416(e)	Is it a requirement of the deadman to also shear at MASP?	Yes, the shear rams installed in the BOP must be able to shear drill pipe at MASP.
§ 250.416(e)	If there is a requirement of the deadman to also shear at MASP, what usable volume and pressure should remain after actuation?	BSEE is researching this issue and may address it in future rulemaking.
§ 250.416(e)	Please confirm that operators will only be required to demonstrate shearing capacity for drill pipe (which includes workstring and tubing) that is run across the BOP stack and that BHA components, drill collars, HWDP, casing, concentric strings, and lower completion assemblies are excluded from this requirement.	BSEE agrees with this comment. We revised §250.416 to specifically include workstring and tubing.
§ 250.416(e)	A better requirement would be to demonstrate shearing capacity for drill pipe which includes work-strings and tubing which is run across the BOP stack.	BSEE revised this section in this Final Rule to include workstring and tubing as drill pipe.
§ 250.416(e)	Shearing capacity with MASP should be modified to shearing capacity with mud hydrostatic pressure plus a conservative shut-in pressure limit set by the operator and contractor where shut-in is transferred from the annular BOP to Ram BOP. At this point increased pressure in the cavity between the pipe rams and annular preventer should be eliminated. BOEMRE should request the internal bore pressure shear capacity calculation to be provided at the limit of the BOP system and approval contingent upon MASP being less than internal bore pressure limit.	BSEE requires the operator to design for the case in which blind-shear rams will be exposed to the MASP. BSEE does not agree that we need to request operators to provide the internal bore pressure shear capacity calculation. Designing the BOP for the well design and the conditions in which it will be used will ensure that this concern is addressed.
§ 250.416(e)	Modify the requirement for blind-shear rams to reflect the 2,500 psi maximum pressure limit when placed above all pipe rams and immediately below the annular on the subsea BOP stack. The proposed new API RP-53 4th Edition states pipe rams must be used when shut-in pressure exceeds 2,500 psi. When the blind-shear rams are above all pipe rams in the stack, the well-control sequence would be to shut the annular first and then switch to a pipe ram if the shut-in pressure approaches 2,500 psi. With the blind-shear ram above all pipe rams, it would be nearly impossible for the blind-shear rams to ever experience shut-in pressures approaching MASP.	BSEE disagrees. The operator is required to design for the case in which blind-shear rams are exposed to the MASP. It is possible that this situation may occur and this requirement addresses that possibility.

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
§ 250.416(e)	30 CFR 250.416(e) requires independent third-party verification of pipe shearing calculations at MASP for the blind-shear rams in the BOP stack. Prior to the IFR, this item didn't require the independent third-party verification of shear calculations. Prudent operators always do those calculations to (1) comply with the law as it was written and (2) feel comfortable that pipe can be sheared in an emergency. The requirement for independent third-party verification does not make things safer in the GoM. Why cannot BOEMRE regulators just have the operators do what was already in the regs? Shear calculations are very straight forward and tend to be conservative by 30 percent when it comes to predicting the hydraulic pressure needed to shear tubulars with MASP at the BOP.	BSEE disagrees with this comment and the Final Rule continues to require independent third-party verification. This requirement ensures that everyone will perform the calculations, not just prudent operators. Third-party verification provides additional and necessary assurance that the blind-shear rams will be able to shear the drill pipe at MASP. The additional requirements in this rulemaking are intended to support existing requirements and not replace them.
§ 250.416(f)	The reliability and operability of the BOP can be confirmed without bringing the entire BOP and Lower Marine Riser Package (LMRP) to surface after each well, by visual inspection of a subsea BOP with an ROV and through a thorough function and pressure testing process. Any regulation that would require the operator to pull the stack to surface, handle the riser, and re-run it introduces more risk to personnel, well bore, and equipment. The proposed new API RP–53, 4th Edition, states: "Section 18.2 Types of Tests. This section addresses the types of tests to be performed and the frequency of when those tests are to be performed, realizing that the BOP can be moved from well-to-well without returning to surface for inspections and testing. For those cases, a visual inspection (by ROV) should be performed. Operability and integrity can be confirmed by function and pressure testing. In these instances, subsequent testing criteria shall apply for testing parameters." This approach is safer and the regulation must be amended.	BSEE disagrees. The operator must pull the BOP stack to surface and complete a between-well inspection. The required inspection is more thorough than a visual inspection by an ROV and will help ensure the integrity of the BOP stack. As required in § 250.446(a), a between well inspection must be performed according to currently incorporated API RP 53, sections 17.10 and 18.10, Inspections. The stump test of the subsea BOP before installation was already required under § 250.449(b) as it existed before promulgation of the IFR. To conduct a stump test, the BOP must be located on the surface. The BOP inspection was a recommendation in the Safety Measures Report.
§ 250.416(f)	30 CFR 250.416(f) requires that an independent third-party verify that a subsea BOP stack is fit for purpose. Section 250.416(f)(2) further requires that the subsea BOP stack has not been compromised or damaged from previous service—no guidance is given on how one is to determine that the subsea BOP hasn't been compromised or damaged.	BSEE does not specify how the third-party verifies that the BOP has not been compromised or damaged from previous service. As required in § 250.446(a), a between-well inspection must be performed according to API RP 53, sections 17.10 and 18.10, Inspections. The requirement to conduct a stump test of the subsea BOP before installation existed before promulgation of the IFR, under § 250.449(b). The operator may not hop the BOP stack from well to well and be in compliance with the new provisions of this section or the previously existing requirements under § 250.449(b).
§ 250.416(f)(2)	For multi-well projects where it makes senses to hop the BOP stack from well to well, would a successful subsea function test and pressure test be sufficient evidence that the requirement has been met? This requirement infers that an inspection of the BOP system is required to ensure the system has not been compromised or damaged from previous service. Please confirm that the agency agrees that a subsea BOP system is not compromised or damaged provided it can be function tested and pressure tested in the subsea environment where it will be in operation. Standardized pressure testing in the subsea environment without visual inspection fulfills the requirements of § 250.416(f)(2).	In § 250.416(f)(2), BSEE does not specify how the third-party verifies that the BOP has not been compromised or damaged from previous service. However, BSEE has requirements for between-well inspections in § 250.446(a), and stump testing prior to installation in § 250.449(b).
§ 250.416(f)(2)	If it is mandated that a visual inspection between wells is required then the cost to implement of \$1.2 MM is grossly understated. The cost to pull a BOP for a visual inspection is underestimated. The cost of pulling a subsea BOP for a visual inspection would result in a \$5–\$15 million opportunity cost.	The full cost to pull a subsea BOP to the surface following an activation of a shear ram or lower marine riser package (LMRP) disconnect (under § 250.451(i)) in the benefit-cost analysis is estimated to be \$11.9 million dollars. This amount is within the range suggested by the commenter. However, the requirement to conduct a visual inspection and test the subsea BOP between wells predated the IFR and was in the previously existing regulation at § 250.446(a). Because this requirement is not a new provision, no compliance costs are assigned in the economic analysis.
§ 250.416(f)(2)	Third-party verification that the BOP stack has not been compromised or damaged from previous service can be accomplished by successful subsea function and pressure tests without visual inspection. Between well visual inspections of the BOP internal components is not required.	An independent third-party must confirm that the BOP stack matches the drawings and will operate according to the design. The third-party verification must include verification that: (1) The BOP stack is designed for the specific equipment on the rig and for the specific well design; (2) The BOP stack has not been compromised or damaged from previous service;

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
		<p>(3) The BOP stack will operate in the conditions in which it will be used.</p> <p>BSEE does not specify how the third-party verifies that the BOP has not been compromised or damaged from previous service. However, BSEE has requirements for between-well inspections in §250.446(a), and stump testing prior to installation in §250.449(b).</p>
<p>§250.416(g) Qualification for Independent Third Parties.</p>	<p>The requirements for independent third parties to conduct BOP inspections fail to provide globally consistent standards necessary for the lifecycle use of Mobile Off-shore Drilling Units (MODUs) on a global basis. The Interim Rule allows for an API licensed manufacturing, inspection, certification firm; or licensed engineering firm to carry out independent third-party verification of the BOP system, as well as technical classification societies. We recommend that the Interim Rule be amended to only enable organizations with the necessary breadth and depth of engineering knowledge, and experience and global reach, and demonstrable freedom from any conflict of interest, such as classification societies, can qualify as 'independent third parties'. We believe that owing to the global employment of MODUs, where rigs could be engaged anywhere around the world, only independent technical classification societies have the global reach to ensure consistency in inspection and verification of safety critical equipment necessary to ensure the safe operation of an asset throughout its lifecycle.</p>	<p>In response to comments, BSEE removed the option for the independent third-party to be an API-licensed manufacturing, inspection, or certification firm in §250.416(g)(1) because API does not license such firms.</p> <p>Section 250.416(g)(1) allows registered professional engineers, or a technical classification society, or licensed professional engineering firms to provide the independent third-party verification.</p> <p>Section 250.416(g)(2)(i) requires the operator to submit evidence that the registered professional engineers, or a technical classification society, or licensed professional engineering firms or its employees hold appropriate licenses to perform the verification in the appropriate jurisdiction, and evidence to demonstrate that the individual, society, or firm has the expertise and experience necessary to perform verifications. BSEE may accept the verification from any firm or person that meets these requirements. We will not require the exclusive use of technical classification societies at this time.</p>
<p>§250.420(a)(6)</p>	<p>Certification by a professional engineer that there are two independent tested barriers and that the casing and cementing design are appropriate.</p>	<p>The comment supports the requirements in the IFR. However, BSEE clarified the requirement for the two independent barriers, based on other comments.</p>
<p>§§250.420(a)(6), 250.1712(g), and 250.1721(h).</p>	<p>What is the definition of well-completion activities? This is the first time it has been mentioned that barriers had to be certified by a professional engineer, only casing design and cementing were mentioned in the past.</p>	<p>BSEE clarified the certification requirement in §250.420(a)(6) by removing the term "well-completion activities," because it was redundant in the context of that provision. The two required barriers are part of the casing and cementing design.</p>
<p>§§250.420(a)(6), 250.1712(g), and 250.1721(h).</p>	<p>Will BOEMRE still check casing designs based on load cases that are not published? If so, will certified plans be rejected due to design reviews within the agency? Will Agency design reviews be done by Registered Professional Engineers (RPE)? If not, what will be the process for approval when an RPE approved design conflicts with the Agency? Will the Agency mandate a change and take the responsibility for that change?</p>	<p>There are multiple ways to calculate the load cases. The operator must ensure the well design and calculations are appropriate for the purpose for which it is intended under expected wellbore conditions. BSEE engineers will conduct the design reviews. Any issues will be resolved with the operator on a case-by-case basis.</p>
<p>§§250.420(a)(6), 250.1712(g), and 250.1721(h) Professional Engineer.</p>	<p>Liabilities that will be placed onto a "Professional Engineer" are an issue. The PE approach demands that the PE is intimately involved in all aspects of the design and also in primary communication as the well is drilled and small variations in the plan are made or happen. All liability for the well must remain with the operator without any "dilution" to a PE, although review by a PE or other "independent and reputable" third-party is totally appropriate.</p>	<p>The intent of the PE certification is to ensure that all plans are consistent with standard engineering practices. To add to safety assurances, BSEE included language in §250.420(a)(6) that the Professional Engineer be involved in the design process. Such person must be included in the design process so that he or she is familiar enough with the final design to make the required certification. Under §250.146(c), persons actually performing an activity on a lease to which a regulatory obligation applies are jointly and severally responsible for compliance. Such third person responsibility does not eliminate or dilute the operator's responsibilities for a well.</p>
<p>§§250.420(a)(6), 250.1712(g), and 250.1721(h) Professional Engineer.</p>	<p>Can the required "registered professional engineer" be a company employee?</p>	<p>Yes, the registered professional engineer can be a company employee.</p>
<p>§§250.420(a)(6), 250.1712(g), and 250.1721(h) Professional Engineer.</p>	<p>Require that all certifications needed by a Registered Professional Engineer be done by a Registered Professional Petroleum Engineer. It makes no sense at all to utilize any PE. If so, at least require a BS in Petroleum Engineering. There is no specification to determine how any Registered Professional Engineer is "capable of reviewing and certifying that the * * * is appropriate for the purpose for which it is intended under expected wellbore conditions."</p>	<p>BSEE disagrees that the professional engineer must be a petroleum engineer; a professional engineer with another background who has expertise and experience in well design will be capable of certifying these plans. The expectation is that a licensed professional engineer will NOT certify anything outside of their area of expertise. However, in response to the commenter's concern, this Final Rule adds an expertise and experience requirement for the person performing the certification.</p>

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
<p>§§ 250.420(a)(6), 250.1712(g), and 250.1721(h).</p>	<p>The intent of Congress and the Act does not appear to be complied with by the proposed rule. The use of a registered Professional Engineer to certify casing and cementing programs when “The Registered Professional Engineer must be registered in a State of the United States but does not have to be a specific discipline” does not appear to comply with the allowance for coordination with local Coastal Affected Zone States to have input. Two deficiencies are apparent. One is a licensed professional engineer should not be certifying anything that he is not competent to certify due to his education, training and experience. The second is that the engineer should be licensed in the Coastal Zone Affected State due to the differences that occur in licensing requirements. Some states are more liberal than others in the exemptions allowed and the requirements for discipline specific engineering licensure. If Texas wants to allow a higher risk than Texas offshore Coastal Affected Zones should be the only zones that are allowed to have such higher risk to be taken. If Louisiana or Mississippi want to be more restrictive than their offshore waters should be more restrictive. This seems to be the intent of the Coastal Zone Affected State language in the federal statutes. As currently proposed a licensed engineer from the state of minimum requirements can be selected.</p>	<p>The certification requirement is intended to ensure that all operators meet basic standards for their cement and casing. This requirement for PE certification is a substantial improvement compared to previous rules in which a certification was not mandatory. The final rule has added a provision to assure that a licensed professional will NOT certify anything outside of his or her area of expertise and experience. Because OCS projects occur offshore from several states, a company may want to use the same PE regardless of the location of any given well. Furthermore, the certification requirement applies uniformly to any project in Federal waters. Under these conditions, the certification standard combined with the liabilities associated with certification of a plan effectively address certification concerns. Also, States with approved coastal management programs have adequate opportunities to express their concerns about specific projects under other provisions of the regulations.</p>
<p>§§ 250.420(a)(6), 250.1712(g), and 250.1721(h).</p>	<p>BOEMRE now requires a Registered Professional Engineer to certify a number of well design aspects including: casing and cementing design, independent well barriers, and abandonment design. This is a new, important requirement. BOEMRE does not, however, require that the engineer be certified as a Registered Professional Engineer in any particular engineering discipline. This creates the possibility that a Professional Engineer, with little or no experience with oil and gas well design, drilling operations or well pressure control could be certifying these designs. For example, BOEMRE’s rule would allow an electrical engineer to certify a well design that may have no expertise or experience on offshore well construction design. We recommend that the Registered Professional Engineer requirement be limited to the discipline of Petroleum Engineering, and/or a Registered Professional Engineer in any engineering discipline that has more years of experience designing and drilling offshore wells. We agree that Registered Professional Engineers have the technical capability to assimilate the knowledge to certify well construction methods over a period of time, but only the Registered Professional Petroleum Engineer is actually tested on well casing, cementing, barriers and other well construction design and safety issues. Other engineering disciplines require on-the-job training and experience to expand their expertise and apply their engineering credentials to offshore well construction design certification.</p>	<p>BSEE disagrees that the professional engineer must be a petroleum engineer; a professional engineer with another background who has experience in well design will be capable of certifying these plans. In response to commenters’ concerns, we have added an expertise and experience requirement for the certifying person. It is the operator’s responsibility to ensure that the Registered Professional Engineer is qualified and competent to perform the work and has the necessary expertise and experience. The expectation is that a licensed professional engineer will NOT certify anything outside of his or her area of expertise. The operator certainly has a strong incentive to assure that the professional engineer is competent because the operator is responsible for the activities on the lease and the consequences thereof.</p>
<p>§ 250.420(a)(6)</p>	<p>30 CFR 250.420(a)(6) requires that a Registered Professional Engineer certify barriers across each flow path and that a well’s casing and cementing design is fit for its intended purpose under expected wellbore conditions. There are RPE’s whose area of expertise isn’t well design or construction. There are very few drilling and completion engineers with both sufficient expertise to make the required assessment and a PE license. What in this requirement makes operations in the GoM safer? Does BOEMRE plan to consider changing this requirement to expand the number of truly qualified people who can accurately assess this situation? What will eventually be the right standard for the certifying authority?</p>	<p>Requiring a Registered Professional Engineer’s certification helps to ensure that the casing and cementing design meets accepted industry design standards. The expectation is that licensed professional engineers will NOT certify anything outside of their area of expertise. In response to this comment, this Final Rule does expand the persons who can make the required certification if they are registered and have the requisite expertise and experience.</p>

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
§§ 250.420(a)(6), 250.1712(g) and 250.1721(h).	The description of “flow path” would be improved by commenting on examples and/or by providing a definition and not including potential paths, i.e., previously verified or tested mechanical barriers are accepted without retest. Flow paths in the broadest terms would include annular seal assemblies which may not be accessible on existing wells. The assumption that all casing strings can be cut and pulled would result in exceptions in the majority of cases and would introduce a health and safety risk to operating personnel and equipment currently not present.	BSEE revised the regulatory text in § 250.420(b)(3) to include an example of barriers for the annular flow path and for the final casing string or liner. Once an operator performs a negative test on a barrier, the operator does not have to retest it unless that barrier is altered or modified. Also, see the subsequent comment responses that address the flow paths to which the barrier requirements apply.
§ 250.420(a)(6)	Will BOEMRE still check casing designs based on load cases that are not published? If so, will certified plans be rejected due to design reviews within the agency?	BSEE engineers will check casing designs. BSEE will resolve any differences with the operator on a case-by-case basis.
§ 250.420(a)(6)	BOEMRE has not provided specific guidance on what aspects of casing and cementing designs must be initially certified or guidance on triggers which would cause a plan to be recertified for continuance of operations. The Offshore Operators’ Committee OOC provided those triggers to BOEMRE on October 12, 2010, and requests they be accepted as the only triggers for plan certification. Currently, the BOEMRE is inconsistent in their requests for recertification and fearful of approving minor changes that have no effect on safety. Further, delays to operations resulting in additional operational exposure and safety risk are to be expected when the Agency requires arbitrary recertification when simple changes are required. The requirement for an RPE review for OCS operations may become a bottleneck if this requirement becomes a standard for all U.S. operations.	While the list provided by the commenter contained some good examples, it is not comprehensive. If an activity triggers the need for a revised permit or an APM, then the Registered Professional Engineer must recertify the design. BSEE is working to improve consistency among the District Offices.
§ 250.420(b)(3)	Add clarification to the dual mechanical barrier requirement to ensure the barriers are installed within the casing string and does not apply to mechanical barriers that seal the annulus between casings or between casing and wellhead. Acceptable barriers for annuli shall include at least one mechanical barrier in the wellhead and cement across and above hydrocarbon zones. Placement of cement can be validated by return volume, hydrostatic lift pressure or cased hole logging methods. Industry best practices do not consider dual float valves to be two separate mechanical barriers because they cannot be tested independently and because they are not designed to be gas-tight barriers. This regulation does not achieve the safety objectives of the Drilling Safety Rule	In response, this Final Rule revises § 250.420(b)(3) to provide that for the final casing string (or liner if it is the final string), an operator must install one mechanical barrier, in addition to cement, to prevent flow in the event of a failure in the cement. In response to the comment, we also clarify that a dual float valve, by itself, is not considered a mechanical barrier. The appropriate BSEE District Manager may approve alternatives.
§ 250.420(b)(3)	Does the dual mechanical barrier requirement apply to just the inside of the casing or to both the inside and annulus flow paths? Our interpretation is the inside of the casing. It is also not clear when these dual barriers are required.	BSEE revised the regulatory text at § 250.420(b)(3) to clarify the requirement that two independent barriers are required in each annular flow path (examples include, but are not limited to, primary cement job and seal assembly) and for the final casing string or liner. The appropriate BSEE District Manager may approve alternatives.
§§ 250.420(b)(3), 250.1712(g) and 250.1721(h).	The incorporation by reference of API RP 65–2 in § 250.415(f) includes a definition of a mechanical barrier. This either confuses or contradicts the use of the phrase “mechanical barrier” in sections §§ 250.420(b)(3), 250.1712(g) and 250.1712(h). The description of a “seal achieved by mechanical means between two casing strings or a casing string and the borehole” would not be possible regarding an existing well, specifically for the temporary or permanent abandonment, and does not include seals that are not in an annulus. Question: Do cast iron bridge plugs and retainers/packers without tubing installed meet the requirement for mechanical barriers?	BSEE revised the language in § 250.420(b)(3) to clarify that the operator must install two independent barriers to prevent flow in the event of a failure in the cement, and clarified that a dual float valve is not considered a barrier. The appropriate BSEE District Manager may approve alternative options. BSEE revised the language in §§ 250.1712 and 250.1721 to clarify the requirements. For wells being permanently abandoned and wellhead removed, the PE needs to certify that there are two independent barriers in the center wellbore and the annuli are isolated per the regulations at § 250.1715. If the wellhead is being left in place for the production string, the registered PE must certify two independent barriers in the center wellbore and the annuli. The registered PE may not certify work that was previously performed; the registered PE must only certify the work to be performed under the permit submitted. A cast iron bridge plug is an option as a mechanical barrier. With regard to the question of using retainers/packers to meet the requirement for mechanical barriers, evaluation will be conducted on a case-by-case basis.

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
§ 250.420(b)(3)	The rules seem to encourage use of devices described in Section 3 of RP 65, some of which have never been used in deepwater and are in fact of dubious utility. It is agreed that more stringent cementing practices are in order, but these proposed rules are too confusing to serve this purpose. This section needs to be revisited and specific, practical, recommended practices set out.	BSEE revised this section in the Final Rule to clarify the requirement of two independent barriers, and also clarified that a dual float valve is not considered a mechanical barrier. The BSEE District Manager may approve alternatives.
§ 250.420(c)	30 CFR 250.420(c) requires that cement attain 500 psi compressive strength prior to drill out. What drives the CS requirement? It's not API RP 65–2.	This is a previously existing requirement and therefore not within the scope of this rulemaking.
§§ 250.420, 250.1712, and 250.1721	Previous guidance/interpretation issued by BOEMRE said that deviation from certified procedures required contact with the appropriate BSEE District Manager. This is documented only in the guidance and is not implicit in this part of the rule. We request that BOEMRE specify the kinds of variances that require this contact.	If an activity triggers the need for a revised permit or an APM, then the Registered Professional Engineer must recertify the design and the revised permit or Application for Permit Modification (APM) must receive approval from the appropriate BSEE District Manager.
§ 250.423(b)	Need definition or clarity around the term—lock down and the requirement for locking down a drilling liner. Must all liner hangers have hold down slips? Normally conventional line hangers only have hang off slips to transfer the weight of the liner to the previous casing string. Once the seal is energized for a Liner Top Packer, it will hold pressure from below and above, but not all seals have slips to prevent uplift should the pressure-area effect exceed the weight of the liner. Requiring hold down slips on a conventional liner hanger increases the difficulty to fish the liner out of the hole, in fact it will lead to a milling operation.	BSEE has revised the language in § 250.423(b), to clarify that the Final Rule does not require the use of a latching or lock down mechanism for a liner. However, if a liner is used that has a latching or lock down mechanism, then that mechanism must be engaged.
§ 250.423(b)	As currently drafted, § 250.423(b) requires negative testing to be set to either 70 percent of system collapse resistance pressure, saltwater gradient, or 500 psi less than formation pressure, whichever is less. The rule implies that operators are required to perform a test on the casing seal; however, the industry has had several examples of where testing to a salt water gradient to sea floor has caused casing collapse in deep wells with casing across the salt. This regulation does not clearly state whether it applies to casing shoe extensions, such as expandable casing or 18" (which is a surface casing shoe extension). Since not all casing sizes (e.g. 16" and 18") have lockdown mechanisms at this time, the rule should allow for waivers to this requirement until such time that lockdown mechanisms are available.	BSEE revised the language for the requirements for a negative test under § 250.423(c). The operator must perform a negative pressure test on all wells that use a subsea BOP stack or wells with mudline suspension systems to ensure proper casing or liner installation. You must perform the negative test to the same degree of the expected pressure once the BOP is disconnected. BSEE also revised the language for the requirement to ensure proper installation of the casing in the subsea wellhead and liner in the liner hanger in § 250.423(b). Regarding lockdown mechanisms, see previous comment.
§ 250.423(b)	The operator must perform a pressure test on the casing seal assembly to ensure proper installation of casing or liner. The operator must ensure that the latching mechanisms or lock down mechanisms are engaged upon installation of each casing string or liner. Performance and documentation of a pressure test on the casing seal assembly to ensure proper installation of the casing and the liner are essential. Documentation that the latching mechanisms or lock down mechanisms are fully engaged upon installation of each casing string or liner must be mandatory.	BSEE agrees with this comment. Section 250.423(b) requires performance of a pressure test on the casing seal assembly and further requires the operator to maintain the necessary documentation.
§ 250.423(b)(1)	Not clear if integral latching capability of casing hanger/seal assembly is acceptable or if a separate mechanism is required.	Under § 250.423(b)(1), the operator must ensure proper installation of casing in the subsea wellhead by ensuring that the latching mechanisms or lock down mechanisms are engaged upon installation of each casing string. The rule does not require a specific type of latching mechanism. Integral latching capability of the casing hanger or seal assembly is acceptable.
§ 250.423(c)	What is the design basis and acceptance criteria required for negative testing?	The regulations do not specify a particular design basis for the negative pressure test. Under § 250.423(c)(3) operators must submit negative test procedures and provide their criteria for a successful test to BSEE for approval. BSEE revised the language of § 250.423(c)(5) to include examples of indications of failure.

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
§ 250.423(c)	It is imperative that the operator establish what is “normal” for this type of testing event, such that the rig crew is in no doubt as to what to look for and whether or not there is an event going on which is “not normal”.	Operators are required to submit the procedures of these tests and provide their criteria for a successful test with their APD. BSEE revised the regulatory text to include examples of indications of a failed negative pressure test.
§ 250.423(c)	<p>What is the definition of intermediate casing? The rule states a negative pressure test is required for intermediate and production casing. If drilling liners are set below intermediate casing is additional negative testing required?</p> <p>The intent of this requirement is not clear. The magnitude of the negative test is also not apparent. Is the intent to test the entire casing, wellhead, liner top, or the shoe? Surface wellheads are negative tested for each BOP test when the stack is drained and water is used for a test. If a negative test of an intermediate shoe is intended, then, what is the purpose since the casing shoe will be drilled out. In general, negative testing should not apply to all wells and should apply if the load is anticipated and then not until such time it is needed.</p>	BSEE revised § 250.423(c) to clarify the requirements for the negative pressure test. Intermediate casing is any casing string between the surface casing string and production casing string. We revised the Final Rule to require negative pressure tests only on subsea BOP stack and wells with mudline suspension systems. We specifically require the operator to perform a negative pressure test on the final casing string or liner, and prior to unlatching the BOP at any point in the well (if the operator has not already performed the negative test on its final casing string or liner). At a minimum, the negative test must be conducted on those components that will be exposed to the negative differential pressure that will occur when the BOP is disconnected. The intent of the requirement is to ensure that the casing can withstand the wellbore conditions. The Final Rule addresses indicators of failed pressure tests and specifies what the operator must do in the event of a failed test.
§ 250.423(c)	Wells with surface wellheads should be exempt from negative tests unless the well is to be displaced to a fluid less than pore pressure and in that case the shoe, productive intervals, and liner tops can be negative tested to the amount anticipated prior to or during the displacement. The requirement to negative test wells with surface wellheads should not be mandated since the well can be displaced to a fluid less than pore pressure under controlled conditions without risk of an influx getting in a riser.	We agree that as a general matter wells with surface well heads should be exempt from negative pressure tests and we revised the Final Rule to require the negative pressure test only for wells that use a subsea BOP stack or wells with mudline suspension systems. We did, however, provide that if circumstances warrant, the BSEE District Manager may require an operator to perform additional negative pressure tests on other casing strings or liners (e.g. intermediate casing string or liner) or on wells with a surface BOP stack.
§ 250.423(c)	Additional guidance given by BOEMRE has indicated a desire to negative test all liner tops exposed in either the intermediate or production annulus on all wells with surface BOP equipment. This requirement is not consistent with the desire to improve safety since many liner tops are never exposed to negative pressures during the life of the well. Thus performing the test exposes personnel to additional exposure while tripping pipe to perform the test, risks the well by installing non-drillable test packers above the liner top during the test, and will expose personnel to additional material handling requirements.	All liner tops, exposed below the intermediate casing (wells with mudline suspension systems) must be tested, but only for wells with subsea BOP stacks or wells with mudline suspension systems. The test must be performed before displacing kill weight fluids in preparation for disconnecting the BOP stack.
§ 250.423(c)	The Agency has not provided guidance on when the test is to be performed. Testing upon installation is not advisable due to additional pressure cycles applied to the cement early in the development of its strength that could result in premature cement failure. Additionally, if a negative load is anticipated during operations, it is best to defer the negative test to assure well integrity is validated just prior to the intended operation.	This Final Rule revises § 250.423(c) to state that the negative pressure test must be performed on the final casing string or liner, and prior to unlatching the BOP at any point in the well. The negative test must be conducted on those components, at a minimum, that will be exposed to the negative differential pressure that will be seen when the BOP is disconnected.
§ 250.423(c)	Negative testing should be performed on subsea wells and wells with mudline suspension systems where it is important to validate barriers prior to removal of mud hydrostatic pressure during an abandonment or suspension activity such as hurricane evacuation or BOP repair. Drilling or production liner tops should not require negative testing upon installation. Testing should be deferred until just prior to performing an operation where a negative load is anticipated on a liner top or wellhead hanger.	BSEE agrees with the comment. We revised § 250.423(c) to require the negative pressure tests only on wells that use a subsea BOP stack or wells with mudline suspension systems. See the response to the previous comment.
§ 250.423(c)	The magnitude and duration of an acceptable negative test should be provided for consistency. Recommend negative tests on subsea wells to be equal to SWHP at the wellhead.	We revised the Final Rule to require the negative test be performed to the same degree of the expected pressure once the BOP is disconnected.

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
§ 250.423(c)	30 CFR 250.423(c) requires negative testing of intermediate casing and liner tops, but offers no guidance as to the magnitude of the required negative test. As an experienced deepwater driller, I've assumed that BOEMRE meant for this testing to apply to intermediate casing string seal assemblies on subsea wells. That mimics what the well would see in a BOP stack disconnect situation. I see no valid reason to be negatively testing intermediate casing shoes that will be subsequently drilled out. I'd also like to understand the rationale behind a negative test on all liner tops. Just because a liner top tests negatively doesn't mean it won't fail if the well is exposed to a differential as a result of a blow out. I see a negative test on production liner tops as a prudent thing, but this type testing of drilling liners that will ultimately be covered up can increase risk in certain situations (small platform rig on a floating facility with limited pit space could get into an unintended well-control situation dealing with the fluid handling/movements required by a negative test).	BSEE agrees. We revised this requirement to require the negative pressure tests only on wells that use a subsea BOP stack or wells with mudline suspension systems. See the response to the previous comments.
§ 250.442	Must heavy weight drill pipe be shearable with blind shear rams?	Blind-shear rams must be capable of shearing any drill pipe in the hole under maximum anticipated surface pressure, including heavyweight drillpipe. This Final Rule revises §250.416(e) to include workstring and tubing to clarify that these are also considered drill pipe and need to be shearable by the blind-shear rams.
§ 250.442	What does “operable” mean for dual pod controls? Does it mean 100 percent functional and redundant?	The provision under §250.442(b), for an “operable dual-pod control system” was an existing requirement and was included in the IFR because that section was rearranged into a table to accommodate the new provisions. The meaning of “operable dual-pod control system” has not changed. The commenter is correct in that these are redundant systems. Each pod has to be independent of the other and 100 percent functional.
§ 250.442	In §250.442(c), what does “fast” mean for subsea closure and what are the “critical” functions?	As specified in §250.442(c), the accumulator system must meet or exceed the requirements in API RP 53, section 13.3, Accumulator Volumetric Capacity.
§ 250.442	What will be competency basis for qualification of an individual to operate the BOP's?	The operator must ensure that all employees and contract personnel can properly perform their duties, as required under §250.1501. Section 250.442(j) prescribes training and knowledge requirements for persons authorized to operate critical BOP equipment.
§§ 250.442(d), § 250.515(e), and § 250.615(e)	While the verified ability to close one set of pipe rams, close one set of blind-shear rams, and unlatch the lower marine riser package using a Remotely Operated Underwater Vehicle (ROV) is critical, the time delay associated with launch and subsea deployment of an ROV will likely have enabled the full force of a major blowout to already clear the well bore and result in excessive pressures and a debris stream at the BOP that can complicate efforts to shut in the well. Preventive and precautionary measures are a priority, and immediate shut-in capability will always be more critical than after-the-fact ROV response; thus this initiative should go further toward ensuring more immediate wild well shut-in capabilities, either in the current rulemaking, or in a future rulemaking.	We agree that there is a time delay associated with the launch and deployment of an ROV and that preventative and precautionary measures are a priority and immediate shut-in capability is critical. The intent of the provision is to ensure that an ROV is available in the unlikely event that all other measures fail. This regulation is intended to address broad issues related to well-control; BSEE is planning future regulations that will focus on preventative measures and improving immediate response capabilities.
§§ 250.442(e), 250.515(e), and 250.615(e)	The ROV crews should not be required on a continuous basis, this item needs to be revised to reflect the need for having a trained ROV crew on board only when the BOP is deployed.	BSEE agrees with the substance of this comment and has revised § 250.442(e) accordingly.
§ 250.442(j)	What is meant by operate critical BOP equipment, maintenance, or activation of equipment?	Section 250.442(j) establishes minimum requirements for personnel who operate any BOP equipment. The paragraph expressly refers to BOP hardware and control systems. In addition, other paragraphs of §250.442 refer to specific features of the BOP and associated equipment. Any person authorized to operate or maintain any of the BOP components or systems must satisfy the requisite training and knowledge requirements.

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
§§ 250.446(a), 250.516(h), 250.516(g), and 250.617 (Section numbers refer to the IFR.).	<p>The recordkeeping requested should be a responsibility of the drilling contractor. Many operations are short lived contracts and once the rig is released, the contractor has no obligation to ensure the records remain on the rig. Drilling contractors should be required to have a BOPE certification program complete with a certificate of compliance that is renewed every 3 to 5 years by a certification agency or class society. This will assure drilling contractors maintain their equipment to a higher standard on a routine basis.</p> <p>Certification documents for rental BOPE would also be used by the operator or contractor depending upon who is renting the equipment.</p>	<p>Under § 250.146(c), lessees, operators, and persons performing an activity subject to regulatory requirements are jointly and severally responsible for complying with regulatory requirements. This includes contractors maintaining and inspecting BOP systems. See the discussion in the section-by-section portion of this preamble.</p>
§§ 250.446(a), 250.516(h), 250.516(g), and 250.617 (Section numbers refer to the IFR.).	<p>We believe that API-recommended practices have not proven to be a standard that has generated full and verifiable compliance by all. Require documentation of BOP inspections and maintenance according to API RP 53. The codification of API-recommended practices via Federal regulations will be needed to ensure reliable compliance going forward. This should take place in the current rule, or, at a minimum, in a future rule.</p>	<p>BSEE already requires operators to follow Sections 17.10 and 18.10, Inspections; Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells. We continually review standards and our use of these standards. We may consider additional documentation from operators in future rulemaking.</p>
§ 250.449(h)	<p>Are the requirements for function test for normal or high pressure function or both?</p> <p>In § 250.449(h), request change from the required duration from 7 days to 14 days. The basis for this is to mitigate the risk and exposure due to the additional tripping of pipe out of hole in order to function test blind/shear rams.</p>	<p>Section 250.449(h) is a previously existing requirement that was included in the IFR only to make editorial changes to accommodate new requirements in subsequent paragraphs. The requested revision is outside the scope of this rulemaking.</p>
§§ 250.449(j), 250.516(d)(8) (Section numbers refer to the IFR.).	<p>Stump test ROV intervention functions</p> <p>This does not go far enough. This is insufficient. It is necessary that the BOP ROV functions be regularly tested at the seabed with the ROV that would be used in an emergency. The only requirement of the stump test should be to test the plumbing. The BOP ROV functions should be tested at each BOP test when at operating hydrostatic pressures and temperatures.</p>	<p>Section 250.449(j) requires the operator must test one set of rams during the initial test on the seafloor. In this Final Rule, we added that the test of the one set of rams on the seafloor must be done through an ROV hot stab to ensure the functioning of the hot stab. BSEE may consider additional requirements in future rulemaking.</p>
§ 250.449(k)	<p>Section 250.449(k) explains: “[f]unction test auto shear and deadman systems on your subsea BOP stack during the stump test. You must also test the deadman system during the initial test on the seafloor.” We do not recommend testing the deadman system when the stack is attached to a subsea wellhead. If the rig experiences a dynamic positioning incident, i.e., a drive-off or drift-off during the test, the only alternative system available to disconnect from the wellhead is the ROV intervention system. Failure to disconnect in time could result in serious damage to the rig equipment, the well head, or the well casing. As an alternative, we believe it would be more appropriate to test the autoshear system subsea. Such a requirement will test the same hydraulic system as the deadman, however, the autoshear function does not disable the control system and create the same well and equipment hazards as testing the deadman system.</p>	<p>BSEE believes that not testing the deadman system is a greater risk than conducting the test. Testing the deadman system on the seafloor is necessary to ensure that the deadman system will function in the event of a loss of power/hydraulics between the rig and the BOP. To help mitigate risk for the function test of the deadman system during the initial test on the seafloor, we added that there must be an ROV on bottom, so it would be available to disconnect the LMRP should the rig experience a loss of stationkeeping event. We also added clarifications for the required submittals of procedures for the autoshear and deadman function testing, including procedures on how the ROV will be utilized during testing.</p>

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
§ 250.449(k)	<p><i>Modify deadman system testing requirements to increase safety.</i></p> <p>As drafted, operators must test the deadman system during the initial test on the seafloor. Intentionally disabling the deadman system increases the risk to personnel, well bore and equipment should a “power management” or “loss of station keeping” incident occur during a deadman system test. Testing of the deadman system requires shutting down of power and hydraulic systems to the BOP thereby eliminating the ability to disconnect in a controlled manner should a “power management” or “loss of station keeping” incident occur. As a result, rig personnel could be exposed to the consequences of a violent release of tension if a riser component fails and seafloor architecture will be exposed to released/dropped riser components. Revise the deadman system testing requirement, bringing it in line with the proposed new API RP–53, 4th Edition recommendations. Specifically, testing should be completed during commissioning, rig acceptance and if any modifications or maintenance has been performed on the system, not to exceed 5 years.</p>	<p>BSEE believes that not testing the deadman system is a greater risk than conducting the test. Testing the deadman system on the seafloor is necessary to ensure that the deadman system will function in the event of a loss power/hydraulics between the rig and the BOP. To help mitigate risk for the function test of the deadman system during the initial test on the seafloor, we added that there must be an ROV on bottom, so it would be available to disconnect the LMRP should the rig experience a loss of stationkeeping event. We also added clarifications for the required submittals of procedures for the autoshear and deadman function testing, including procedures on how the ROV will be utilized during testing.</p> <p>BSEE will review API RP–53, 4th Edition, and decide if it is appropriate for incorporation, after it is finalized.</p>
§§ 250.449(k), 250.516(d)(9), 250.616(h)(2) (Section numbers refer to the IFR.).	<p>We recommend testing the deadman system when attached to a well subsea upon commissioning or within 5 years of previous test but not at every well. If during the testing time the rig experiences a dynamic position incident, i.e., a drive off or drift off, the only options to disconnect from the well are acoustically (if acoustic system fitted), or with an ROV. Failure to disconnect in time could result in serious equipment damage, and/or damage to the well head.</p>	<p>BSEE believes that not testing the deadman system is a greater risk than conducting the test. Testing the deadman system on the seafloor is necessary to ensure that the deadman system will function in the event of a loss power/hydraulics between the rig and the BOP. To help mitigate risk for the function test of the deadman system during the initial test on the seafloor, we added that there must be an ROV on bottom, so it would be available to disconnect the LMRP should the rig experience a loss of stationkeeping event. We also added clarifications for the required submittals of procedures for the autoshear and deadman function testing, including procedures on how the ROV will be utilized during testing.</p>
§§ 250.449(k) and 250.516(d)(9) (Section numbers refer to the IFR.).	<p>Stump test the autoshear and deadman. Test the deadman after initial landing.</p> <p>Both the deadman and autoshear should be tested on the seabed. Moreover the Deadman should include a disconnect function. However, the LMRP connector should not be unlocked during this test. Rather, the LMRP disconnect function should be plumbed in such a way that during the test the fluid can be vented to sea rather than to the unlatch side.</p>	<p>On the initial test on the seafloor, the operator is required only to test the deadman system. The rule requires operators to submit their test procedures with the APD or APM for approval. BSEE may develop specific test procedures at a later time.</p>
§ 250.451(i)	<p>A successful seafloor pressure and function test of the BOP following a well-control event also is an acceptable means of verifying integrity. Ram sealing elements would be compromised before damage to the rams themselves would be extensive enough to prevent successful shearing of pipe. Additionally, plugging an open hole that may be experiencing ballooning and gas following a well-control event and pulling the BOP and riser present safety and operational risks that are likely much greater than proceeding with the drilling program using a fully tested BOP stack.</p>	<p>After a well-control event where pipe or casing was sheared, a full inspection and pressure test assures that the BOP stack is fully operable. The rule requires the operator to do this only after the situation is fully controlled.</p>
§ 250.451(i)	<p>We believe § 250.451(i) is best read to only require a subsea BOP stack to surface when pipe is sheared, rather than actuated on an empty cavity. We request that the agency clarify that the requirement to pull a subsea BOP stack to surface after actuating the blind shear rams does not apply when the blind shear rams are actuated on an empty cavity, but applies when pipe is sheared.</p>	<p>BSEE agrees with the comment that § 250.451(i) does not apply to actuation of shear rams on an empty cavity. Section 250.451(i) states that an operator must retrieve the BOP if: “You activate the blind-shear rams or casing shear rams during a well-control situation, in which pipe or casing is sheared.”</p>

TABLE 1—SPECIFIC SECTIONS COMMENTS AND RESPONSES—Continued

Section—topic	Comment	BSEE response
§ 250.456(j)	Does this requirement only refer to the end of well during abandonment or at any time during the drilling of a well? There are times when mud weight is cut prior to drilling out a casing shoe due to exposure of weak formations or anticipated lost circulation. Would approval be required to cut mud weight in these circumstances? Consider that mud weight is cut just prior to drilling out the shoe in a controlled environment at which time the entire system is negative tested with pipe in the hole at TD and BOPs are capable of shutting in the well if and when needed.	This Final Rule revises § 250.456(j) to clarify that this requirement applies any time kill-weight mud is displaced, putting the wellbore in an underbalanced state. If the mud weight is cut, but the wellbore will remain in an overbalanced state, then approval is not required.
§§ 250.515 and 250.616	It appears that some of the requirements of NTL 2010–N05 which applied to workover BOPs have been omitted in the revision to 30 CFR 250.5XX and 250.6XX. Specifically, verification that the blind/shear is capable of shearing all pipe in the well at MASP has been omitted for workover and coiled tubing operations. Verification of this capability is as important in workover as it is in drilling, for both surface BOPs and subsurface BOPs. API RP 16ST, “Coiled Tubing Well-control Equipment Systems”, Section 12, “Well-control Equipment Testing”, should be referenced in 30 CFR 250.6XX in addition to the reference to API RP 53.	BSEE agrees that it is important for BOP requirements to be consistent, regardless of the application or stage of a well. These requirements should also apply to well-completion and well-workover activities. We changed the regulatory text in §§ 250.515 and 250.615 to reflect this. In addition, in response to the concern raised by the commenter, this Final Rule adds these requirements to subpart Q, since the same equipment used in drilling and workovers may be used in decommissioning operations, and similar safety risks also exist. BSEE may consider incorporating by reference API RP 16ST, “Coiled Tubing Well-control Equipment Systems” in future rulemaking.
§ 250.1503	What is the definition of enhanced deepwater well-control training? Will this require a new certification of well-control schools?	The rule does not use the phrase, “enhanced deepwater well-control training.” It does require deepwater well-control training for operations with a subsea BOP stack. The operator must ensure that all employees are properly trained for their duties as required in § 250.1501. BSEE expects that operators will integrate the deepwater well-control training requirement into their current subpart O well-control program.
§§ 250.1712(g), 250.1721(h), and 250.1715 ...	Liabilities that will be placed onto a “Professional Engineer (PE)” are an issue. The PE approach demands that the PE is intimately involved in all aspects of the design and also in primary communication as the well is drilled and small variations in the plan are made or happen. All liability for the well must remain with the operator without any “dilution” to a PE, although review by a PE or other “independent and reputable” third-party is totally appropriate.	The operator is responsible for all activities on its lease, regardless of requirements for various persons to certify or verify various aspects of operations. Although persons performing certifications and verifications have responsibility for their actions, such responsibility will not eliminate or diminish the operator’s responsibilities for compliance with applicable requirements.

TABLE 2—TOPICS AND GENERAL QUESTIONS COMMENTS AND RESPONSES

Topic	Comment	BSEE response
Participate in Standard Development	BOEMRE should participate in API’s open process for adopting industry standards on an on-going basis.	BSEE agrees that its involvement in the standard development process with API and other standards organizations is important. We are already active in API’s industry standard process and we are committed to continuing and increasing this involvement.
Participate in Standard Development	BOEMRE should participate in revising American Welding Society’s (AWS) standards. AWS’s standards committees comply with ANSI-approved procedures for standards development, which, among other things, guarantee public and open participation by any materially affected entity, committee interest group balance, fair voting, and written technical issue resolution. AWS solicits ongoing input and comments for these revisions from any interested party, including BOEMRE. BOEMRE’s input to the standards committees would be invaluable to help understand the goals of the government and to apply AWS’s experts’ thoughtful consideration to ongoing regulatory issues. Moreover, participation in AWS standards-setting would provide BOEMRE with access to valuable scientific and technical expertise.	BSEE agrees that its involvement in the standard development process with AWS and other standards organizations is important. BSEE accepts this and other offers to participate in the development of standards that support the mission of BSEE.

TABLE 2—TOPICS AND GENERAL QUESTIONS COMMENTS AND RESPONSES—Continued

Topic	Comment	BSEE response
Subsea BOP Requirements	More work should be carried out in this area before final requirements are identified. In particular, the findings of the post-mortem on the Horizon BOP should be carefully looked at prior to a “final rule”.	BSEE reviewed the findings of various DWH investigations before developing the Final Rule. Findings from the DWH investigation that are within the scope of this rulemaking were incorporated. BSEE will address other findings in future rules.
Blind-Shear Ram Redundancy Requirements	With this rule, BOEMRE has made the important first step of requiring independent third-party verification of blind shear ram capability, but deferred one of the most critical safety improvements, the requirement to install redundant blind-shear rams in each OCS BOP, to a later rulemaking process. We recommend that redundant blind-shear rams be required for all OCS drilling operations as of June 1, 2011.	BSEE is considering this requirement for future regulations. We do recognize the importance of having redundant safety features on BOP stacks. However, we need to consider all the impacts of such a requirement before requiring it by regulation. BSEE has concluded that the requirements of the IFR, as modified by this Final Rule, have enhanced operational safety sufficiently until such time that BSEE determines whether to add a requirement for additional blind-shear rams.
Accident Event Reporting	Also missing from the IFR is a requirement that OCS operators and their contractors report to BOEMRE any accidental event that could significantly impact well integrity or blowout prevention. This proposed reporting requirement includes, but is not limited to, any event where blowout preventer seal material may be compromised.	BSEE’s incident reporting requirements are covered in §§ 250.187 through 250.190. Specifically, § 250.188(a)(3) requires the reporting of all losses of well-control, including uncontrolled flow of formation or other fluids; flow through a diverter; or uncontrolled flow resulting from a failure of surface equipment or procedures. We are looking into expanding the reporting requirements in future rulemaking.
Third-party Certifications	The rule makes repeated references to third-party “verification” of certain matters related to well-control equipment, including BOPs. The appropriate functional terminology should be “certification,” rather than “verification.” In industry practice, “certification” and “verification” are different functions. A party that “certifies” a process is different from the party that “verifies” the certified process is being followed. This is more than a definitional difference.	We disagree with the commenter’s suggestion. The repeated use of the concept of independent third-party “verification” in § 250.416 and conforming provisions of the other subparts derives directly from various recommendations of the Department’s May 10, 2010 Safety Measures Report, e.g., Safety Measures Report Recommendations I.A.2 and I.C.7 (pp. 20–21) that use the term “verification.” The preparers of that report appear to have understood the distinction between “certification” and “verification” because in other recommendations the term “certification” is used, e.g., Recommendation I.A.1, recommending a written and signed third-party “certification” of certain things. Although a distinction may exist between certification and verification, the provisions of the Final Rule requiring third-party verification of certain features use that term correctly and, together with the other provisions of the Final Rule, establish an adequate basis to reduce safety risks associated with BOP stacks. These rules provide a substantial upgrade over the previous rules that did not contain such provisions.

TABLE 3—REGULATORY IMPACT ANALYSIS COMMENTS AND RESPONSES

Topic	Comment	BSEE response
Regulatory Impact Analysis	The increased costs will negatively impact future OCS development. The IFR itself estimated the baseline risk of a catastrophic blowout at once every 26 years. 75 FR at 63365. This estimate for a blowout in the Gulf of Mexico is even lower, as it appears the estimate used by BOEMRE is based on worldwide catastrophic blowout data.	<p>BSEE will continue to evaluate regulatory changes that could result in offsetting cost savings for OCS operators as directed by the President in his January 18, 2011 executive order, “Improving Regulation and Regulatory Review.”</p> <p>The estimate for the risk of a catastrophic blowout event is based upon one recorded GOM catastrophic blowout event and the historical number of deepwater GOM wells drilled, not world-wide blowout data. Going forward, we estimated the drilling of 160 deepwater wells annually for cost estimation purposes. The 160 deepwater wells per year may be more than will be drilled when considering all of the factors influencing GOM deepwater activity outside of this specific regulation. At the time of this analysis (during the summer of 2010), this number was estimated to be a reasonable baseline for the regulatory benefit-cost analysis. If on average fewer than 160 deepwater wells are drilled annually, the baseline activity scenario provides an upper bound regulatory cost estimate. If an estimate of 120 deepwater wells per year is used in the benefit-cost calculation, both the cost and the benefit <i>i.e.</i>, interval between blowouts will decrease by approximately the same factor. The historical risk of a catastrophic blowout event will be reduced from once in 26 years to once in 34 years.</p>

TABLE 3—REGULATORY IMPACT ANALYSIS COMMENTS AND RESPONSES—Continued

Topic	Comment	BSEE response
Regulatory Impact Analysis	<p>The costs for compliance prepared by the Agency are not reflective of the total cost of compliance and thus will negatively affect both small and large businesses more than alleged by the Agency.</p>	<p>Multiple commenters suggested that the costs of this rulemaking were not fully captured in the Regulatory Impact Analysis. BSEE and BOEMRE used the best available information to determine the compliance cost estimates for this rulemaking. The commenters do not identify specific regulatory provision where costs are claimed to be underestimated. Several of the compliance costs commenters associated with this rulemaking reflect provisions in existing regulations. Additionally, no alternative cost estimates are provided by this commenter. External factors influencing the cost of operating on the OCS are not considered to be compliance costs of this rulemaking. As explained in other portions of this preamble, BSEE has both decreased and increased some cost estimates for provisions in this rulemaking. However, the net estimated compliance cost has decreased from the estimate contained in the IFR.</p>
Regulatory Impact Analysis	<p>The benefit-cost analysis implies that a blowout may pose more problems in deepwater where drilling a relief well is likely to take longer. I find this statement troubling. It could be considered to imply, that it takes longer to penetrate seawater than hard rock. As an example, two drilling targets are at 20,000 feet total vertical depth (TVD). One is in 500 feet of water and the other is in 5,000 feet of water. For a well drilled in 500 feet of water an additional 4,500 feet of hard rock drilling must be completed to reach the target. From public well data on the BOEMRE website, I found the following pair of wells:</p>	<p>API Number TVD Water Depth Time to Reach Total Depth 608124001700 28497 6959 ft 200 days 427084062600 28382 100 ft 390 days It is possible that the statement is true, that is due to a different distribution of TVD in shallow and deep water drilling targets. BOEMRE needs to be rigorous to see if its conjectures are supported by the data. This is part of a pattern of the claim that deep water activities are more risky than shallow water. This assumption is being made by BOEMRE as a result of the Deepwater Horizon incident</p> <p>The typical GOM exploratory well in shallow water takes less than 30 days to reach TVD. The typical GOM deepwater exploratory well takes nearly 90 days to reach TVD. This is primarily because, on average, shallow water wells are not drilled to depths as deep as deepwater wells. Well-completions for “wet” wells and abandonment for “dry” wells take additional time. While exceptions can be found, we maintain that in most cases our assumption will hold that a deepwater relief well will take longer than a shallow water relief well.</p>
Regulatory Impact Analysis	<p>The agency estimates 160 deepwater wells annually for the next 20 years. This is a very important estimate, since it drives the estimates of both the costs and benefits. Granted projections of the future in the oil and gas industry have been notoriously wrong. I see that 160 wells annually as overly optimistic. My reasons are:</p> <ul style="list-style-type: none"> —Historical data show a declining trend of the most recent years with all observations below 160. —Deepwater Horizon incident will lead to less favorable conditions for drilling in the Gulf. —Natural Gas from shale is a major disruption coming to North American energy markets. This is analogous to the cellular phone technology replacing land line phones in the last 20 years. <p>A better way of presenting the future benefits and costs is with a range of scenarios such as 160, 120 and 80 wells a year. The Deepwater Horizon incident will lead to less favorable conditions for drilling in the Gulf of Mexico.</p>	<p>A reduction in the number of wells drilled per year will reduce the estimated annual compliance costs as well as the corresponding likelihood of a catastrophic blowout and hence the potential gains from any improvements in reliability. How much the new regulatory environment will affect future OCS drilling is unknown at this time.</p> <p>BSEE estimates the drilling of 160 deepwater wells annually for cost estimation purposes. The 160 deepwater wells per year may be more than will be drilled when considering all of the factors influencing GOM deepwater activity outside of this specific regulation. At the time this analysis was prepared for the IFR during the summer of 2010, it was estimated to be a reasonable baseline for the regulatory benefit-cost analysis. One hundred sixty deepwater wells per year can serve as an upper bound cost estimate for the regulation. If an estimate of 120 deepwater wells per year is used in the benefit-cost calculation, both the cost and the benefit will decrease by approximately the same factor. The historical risk applied to future drilling estimates for 120 wells per year will reduce the estimated risk from once in 26 years to once in 34 years. For only 80 deepwater wells a year, the risk will be reduced to once each 52 years. A scenario analysis for 120 deepwater wells per year has been added to the benefit-cost analysis.</p>
Regulatory Impact Analysis	<p>BOEMRE estimates an equal likelihood of serious damage or sinking of a MODU drilling rig from a catastrophic blowout event. Press reports indicate the sinking of Deepwater Horizon was due to bad fire fighting procedures. That is, pouring seawater on the floating vessel causing it to sink. When the accident report is completed, new standard practices should emerge for fire fighting with the byproduct of great reduction in the probability of sinking.</p>	<p>BOEMRE's estimate, in the IFR, of an equal likelihood of loss or damage, is based on the two recorded events for severe damage or destruction of deepwater MODUs in the GOM. This rulemaking requires additional the testing of LMRP disconnect functionality. A disconnect of a deepwater MODU during a catastrophic event will likely protect the MODU from total loss. BSEE maintains that our baseline cost estimate for deepwater MODU damage is reasonable for purposes of this benefit cost analysis.</p>

TABLE 3—REGULATORY IMPACT ANALYSIS COMMENTS AND RESPONSES—Continued

Topic	Comment	BSEE response
Regulatory Impact Analysis	<p>The benefit-cost sensitivity analysis provided no basis for the assumption that reservoirs at depths of 3,000 feet are generally more prolific than their shallow water counterparts. That statement is contradicted by most recent Reserves Report (http://www.gomr.boemre.gov/homepg/offshore/fldresv/2006-able4.pdf) which shows of the 20 largest fields in the Gulf of Mexico, only five are located in depth greater than 3,000 feet.</p>	<p>The report referenced by the commenter does indicate that only 5 of the 20 largest GOM fields are in water depths greater than 3,000 feet. If the top 20 fields are further analyzed, 6 of the top 20 fields are in water depths of 2,860 feet or greater and discovered since 1989. Fourteen of the fields are in water depths 247 feet or less and discovered in 1971 or earlier. The GOM shelf is in decline and few large fields are likely to be discovered in the GOM shallow water. Over the last 40 years the largest fields with booked reserves have all been in deepwater. BSEE maintains that the basis for the sensitivity analysis that future discovered reservoirs at water depths of 3,000 feet or greater will be more prolific is a reasonable assumption for the benefit-cost scenario analysis for this rule.</p>
Regulatory Impact Analysis	<p>The agency's estimation of costs is not consistent with our own estimates and we strongly encourage the agency to carefully review the assumptions that went into your analysis. Moreover, to potentially assist you with your examination of the socio-economic costs and consequences of the regulation, we have enclosed a report we commissioned by IHS-Global Insight entitled, "The Economic Impact of the Gulf of Mexico Offshore Oil and Natural Gas Industry and the Role of the Independents," which determined that more than \$106 billion in Federal, state, and local revenues would be lost over a 10-year period if independents were excluded from deepwater. Obviously, this report examined broader policy impacts than were encompassed in the particular regulation, but we believe it provides a useful data set to examine these regulations within a broader context of impacts.</p>	<p>We have reviewed the report by IHS-Global Insight and found nothing that will substantiate, contradict or otherwise provide compliance cost figures for this rule-making. Since the commenter's own estimates were not provided, we cannot evaluate alternative cost estimates suggested by the commenter. The Final Rule does not exclude independents from deepwater drilling.</p>
Regulatory Impact Analysis—Small Business Impacts.	<p>In its notice, BOEMRE included certain information regarding the composition of the oil and gas industry and the small business entities—lessees, operators, and drilling contractors—that will be most affected by this interim rule. BOEMRE estimates that \$29 million dollars or 15.8 percent of the IFR's total cost of \$183 million will be borne by small businesses. This cost would comprise about 0.36 percent of these small businesses' fiscal year 2009 revenue.</p> <p>BOEMRE does not discuss how the regulation's costs would be distributed among small businesses. Advocacy is concerned that these costs will impact certain small businesses more heavily than others. We encourage BOEMRE to include additional information regarding how the industry functions and which small entities are most likely to incur increased costs as a result of this IFR. We also recommend that BOEMRE include a more detailed discussion of the distribution of costs among the small entities identified in the IRFA (Initial Regulatory Flexibility Analysis) in order to accurately determine whether some small entities will incur disproportionate impacts as a result of this rule.</p> <p>The RFA requires agencies to include in their IRFA a description of any significant alternatives to the proposed rule that minimize significant economic impacts on small entities while still accomplishing the agency's objectives. While BOEMRE did note a few alternatives in the interim rule, we recommend that BOEMRE include a more detailed discussion of the alternatives and their effects on small business and the reasons for or against adopting those alternatives. We further recommend that BOEMRE continue to conduct outreach with small entities affected by this rule and any future safety rules to develop alternatives that minimize disproportionate impacts on small entities.</p>	<p>BOEMRE published a separate IRFA on December 23, 2010 (75 FR 80717) with a 30 day comment period. The IRFA and the FRFA published with the final RIA provide the analysis required in the Regulatory Flexibility Act. This includes an estimate of the number of small entities affected, a description of reporting, recordkeeping requirements and evaluation of significant alternatives that could minimize the impacts on small entities while accomplishing the objectives of this rule-making.</p>

TABLE 3—REGULATORY IMPACT ANALYSIS COMMENTS AND RESPONSES—Continued

Topic	Comment	BSEE response
Regulatory Impact Analysis—Small Business Impacts.	A commenter estimated that the rulemaking will increase costs by \$17.3 million for each deepwater well drilled with a MODU. This cost increase is attributed to required modification of the well plan and associated casing design that results in the addition of a liner and associated work.	The compliance costs for the IFR were estimated using the best available information at the time of publication. Neither the IFR nor this Final Rule requires operators to conform to a specific casing design, nor do they require new designs for well plans. The additional requirements of the IFR are intended to increase the safety of operating on the OCS considering the best available and safest technology. The commenter does not identify which elements increase either the time to drill a well by 15 rig days, or the cost by \$17.3 million. Absent new and well-defined information, BSEE is unable to evaluate or adjust the compliance cost estimates for a deepwater well.
Regulatory Impact Analysis—Small Business Impacts § 250.449(h).	A commenter identified \$10.45 million in BOP inspection cost savings per deepwater well. The proposal is to function test the blind-shear rams every 14 days instead of every 7 days as required by § 250.449(h). The commenter claims “prior to the Macondo incident, all the rams on the BOP were function tested once a week except for the blind-shear rams.” Another commenter claims that “ * * * frequent function testing of blind/shears will exacerbate this stack body wear and introduce further exposure to leakage within the BOP”.	The Final Rule does not change the existing regulation at § 250.449(h) which requires a function test every 7 days including the blind-shear rams. The 7-day testing requirement existed before the Macondo event and is not being made more stringent with this rulemaking. The commenter’s assertion that “prior to the Macondo incident, all the rams on the BOP were function tested once a week except for the blind-shear rams” is incorrect. The \$10.45 million figure does not represent an additional compliance cost due to this rule, but an estimated cost savings to the company on a per-well basis if their recommendation for a once-every-two weeks function test requirement is accepted. A Joint Industry Project study completed in 2009 analyzed BOP equipment reliability. The results of this study suggest that up to \$193 million per year could be saved through less frequent testing while achieving the same reliability for BOP performance. However, at this time BSEE believes increasing the duration between tests poses a greater risk than conducting the test on the current schedule. BOP testing frequency is a topic that merits further study.
Regulatory Impact Analysis—Small Business Impacts.	Several commenters claim that the compliance costs are significantly higher than BOEMRE’s estimate. One comment suggests that the “Final Rule will add three to five times the amount the BOEMRE has published.” Another comment claims that the new regulation will cost as much as \$28 million per deepwater well for compliance, compared to the \$1.42 million estimated by BOEMRE.	BSEE has considered the limited cost information provided by commenters and new time and cost estimates obtained by the bureau since the publication of the IFR. The commenter’s \$28 million compliance cost estimate includes a \$10.45 million cost from additional BOP tests. However, these additional BOP tests do not represent additional costs, but a cost savings if the company’s recommendation to function test the blind shear rams every 7 days instead of every 14 days (with regard to the previously existing regulation) is accepted. If the recommendation is not accepted, there is no increased compliance cost for this rulemaking. This proposal on function test intervals is outside the scope of this rulemaking as previously stated in the response to comments for § 250.449(h). The additional \$17.3 million of compliance costs are claimed to result from “modified casing design” and “associated work.” The lack of specific data or citations result in a vague and indeterminate interpretation of these cost estimates. BSEE does not specify well designs. If a new well design used by the operator is the result of industry best practices, it is not a compliance cost of the regulation. As such, BSEE cannot comment on the presumed cost impact for modified casing design and associated work.
IRFA	The IRFA published by BOEMRE does not satisfy the agency’s statutory obligation under the Regulatory Flexibility Act of 1980, as amended. The commenter believes that, since there is not a good cause exception to the Administrative Procedure Act’s notice and comment rulemaking requirement, BOEMRE was required to publish an IRFA at the time of the proposed rulemaking. Further, the IRFA BOEMRE eventually published did not account for the significant costs likely to be imposed by BOEMRE’s new interpretation of 14,000 discretionary provisions found in API standards as mandatory permitting requirements.	The BSEE published an IRFA pursuant to the Regulatory Flexibility Act. While it was not published with the IFR, it was published shortly thereafter and made available for public comment. The SBA Office of Advocacy stated in its comments that “Advocacy appreciates BOEMRE’s decision to publish a supplemental IRFA.” The comments on the IRFA were considered along with all comments on the rulemaking.

TABLE 3—REGULATORY IMPACT ANALYSIS COMMENTS AND RESPONSES—Continued

Topic	Comment	BSEE response
		Regarding the 14,000 discretionary provisions from API standards, BSEE disagrees with the commenter's assertion that § 250.198(a)(3) will have resulted in significant additional costs. See the section-by-section discussion for further elaboration of this issue.

V. Section-by-Section Discussion of the Requirements in Final Rule

As of October 1, 2011, BOEMRE was officially reorganized into the separate agencies of BSEE and BOEM. This Final Rule reflects the appropriate name changes, based on the reorganization.

Nomenclature change. BSEE is revising all references to the term *glory hole* in the regulations at 30 CFR 250 to the term *well cellar*. This revision will amend text at two locations in the regulations (§§ 250.421(b) and 250.451(h)). Both terms refer to a depression deep enough to protect subsea equipment from ice-scour, when drilling in an ice-scour area. However, the term well cellar is more commonly used.

Service Fees (§ 250.125)

This Final Rule updates § 250.125(a)(8) and (9) in the chart to reflect accurate numbering redesignation.

Documents Incorporated by Reference (§ 250.198)

Final § 250.198(a)(3) has been modified from the IFR in response to many comments received on one important issue. Section 250.198(a)(3) pertains to how BSEE ensures compliance with documents incorporated by reference in its regulations. The provision in the IFR read as follows:

The effect of incorporation by reference of a document into the regulations in this part is that the incorporated document is a requirement. When a section in this part incorporates all of a document, you are responsible for complying with the provisions of that entire document, except to the extent that section provides otherwise. When a section in this part incorporates part of a document, you are responsible for complying with that part of the document as provided in that section. If any incorporated document uses the word *should*, it means *must* for purposes of these regulations. (75 FR 63372)

This provision was intended to clarify BSEE's existing policy on compliance with documents incorporated by reference in regulations. A number of commenters from the offshore oil and gas industry objected to this provision. The commenters were particularly

concerned about the statement in the last sentence of the paragraph that for the documents incorporated by reference in 30 CFR part 250, the word "*should*" means "*must*." Commenters asserted that there are 14,000 occurrences of the word "*should*" just in documents incorporated from the American Petroleum Institute (API). These commenters provided a number of examples in which they asserted that the last sentence of paragraph (a)(3) could cause conflicts; undermine safety, instead of improving safety on the Outer Continental Shelf (OCS); and, in certain circumstances, establish requirements with which compliance may be impossible. Accordingly, such commenters specifically requested that the agency remove the last sentence from paragraph (a)(3).

While some of the examples provided by commenters were overstated or did not account for alternatives or for the specifics in the operative language of the incorporated documents, we have removed the last sentence of paragraph (a)(3) as set forth in the IFR because it could have appeared to be overly broad and may not have provided the intended clarification.

The last sentence is not needed as a means of emphasizing the agency's interpretation of the binding effect of documents incorporated by reference, *i.e.*, BSEE relies on the specific regulatory provisions that incorporate a document by reference for the intended effects of each incorporation. The other portions of paragraph (a)(3) make it clear that operators are required to comply with documents incorporated by reference, unless the specific sections performing the incorporation provide otherwise. Moreover, many, but not all, of the individual sections of BSEE regulations that incorporate documents by reference are written in terms that make it clear that compliance is mandatory, even where the incorporated consensus standards were written as recommendations, not obligations.

This position is not a new one and was the agency's interpretation of documents incorporated by reference long before the adoption of the IFR. For instance, in a 1988 **Federal Register** preamble to the final rule converting agency orders into regulations, the

MMS, a predecessor agency to BSEE and BOEM, responded to public comments on the effect of incorporating documents by reference in its rules as follows:

Comment—Objection was raised to the incorporation by reference of "recommended practice" documents which are intended only as *recommendations*, not as rules.

Response—When MMS adopts the specific provisions of a document through the rulemaking process, that incorporation by reference establishes the recommended practice as a minimum standard which must be observed.

Comment—A number of commenters expressed the view that with respect to documents incorporated by reference, it should be clear to what extent references within such incorporated documents are also binding. It was pointed out that documents proposed to be incorporated by reference in turn reference other documents, which reference other documents, down through numerous tiers.

Response—Under the final rule, the material that is incorporated by reference is specifically identified. Adherence to documents referenced within an incorporated document is mandatory if such adherence is necessary for compliance with the document referenced in the rule. (53 FR 10600)

We reaffirm our position stated in the agency's April 1, 1988, (53 FR 10600) rule that when BSEE adopts the specific provisions of a document through the rulemaking process, that incorporation by reference establishes the recommended practice as a minimum standard which must be observed.

We recognize, however, that certain regulations incorporating documents by reference either do not make compliance mandatory with the incorporated provisions, or provide operators some flexibility in achieving compliance. For instance, regulations at § 250.415(f) incorporate by reference API RP 65—Part 2, Isolating Potential Flow Zones During Well Construction. The requirement in § 250.415(f) specifies that operators must submit a written description of how they evaluated the best practices included in API RP 65—Part 2, not that they must comply with each of the best practices. This Final Rule is not intended to upset that interpretation or to modify the meaning of any particular regulatory provision that incorporates documents by reference.

To the extent that the commenters were correct in asserting that the last sentence of § 250.198(a)(3) in the IFR (or other regulations that establish mandatory compliance with incorporated documents) will lead to unintended consequences, BSEE's rules already provide the means for operators to seek relief in situations where they need an alternative means to comply. One provision, § 250.141, allows operators to use alternative procedures or equipment that provides a level of safety and environmental protection that equals or surpasses that required by BSEE rules. Another, § 250.142, provides for departures from operating requirements. Other provisions throughout BSEE regulations allow for departures related to specific circumstances (e.g., plans, drilling operations, and structure removal). It should be noted that all of these departures require advance BSEE approval.

This approach was clarified in a March 28, 2011, Supplemental

Information document that appears on the BSEE Web site. That document made it clear that the rules require operators to seek BOEMRE approval to deviate from a practice or procedure when the document incorporated by reference requires a particular practice or procedure.

Incorporation of API Standard 65—Part 2, Second Edition

In this Final Rule, we have modified § 250.198(h)(79) by incorporating the second edition of API Standard 65—Part 2 that was issued in December 2010. This change was made in response to comments. Previously, the first edition was incorporated. API also designated this recommended practice into a standard.

What must my casing and cementing programs include? (§ 250.415)

In the IFR, BOEMRE added a new § 250.415 (f) requiring the operator to include in its APD an evaluation of the best practices identified in API RP 65—

Part 2, Isolating Potential Flow Zones During Well Construction. In the IFR, we also revised paragraphs (c), (d), and (e) to accommodate the new paragraph. The text of paragraph (f) was changed in this Final Rule to update the cross reference to sections 4 and 5 of the second edition of API Standard 65—Part 2. These sections correspond to sections 3 and 4 of the earlier edition that were previously cross-referenced. The basis and purpose for this section was set forth in the preamble of the IFR (75 FR 63346).

In response to comments, BSEE developed a table, set forth below, based on API Standard 65—Part 2 Annex D which outlines the process summary for isolating potential flow zones during well construction. For example, the operator may use Annex D or the following Table 4 as a guide for complying with the written description of how an operator evaluated the best practices included in API Standard 65—Part 2 required by § 250.415(f).

TABLE 4—EXAMPLE OF HOW TO EVALUATE THE BEST PRACTICES IN API STANDARD 65—PART 2

GENERAL QUESTIONS		
1	Have you considered the following in your well planning and drilling plan determinations: evaluation for flow potential, site selection, shallow hazards, deeper hazard contingency planning, well-control planning for fluid influxes, planning for lost circulation control, regulatory issues and communications plans, planning the well, pore pressure, fracture gradient, mud weight, casing plan, cementing plan, drilling plan, wellbore hydraulics, wellbore cleaning, barrier design, and contingency planning? [API 65–2 1.5].	Yes/No.
2	Have you considered the general well practices while drilling, monitoring and maintaining wellbore stability, curing and preventing lost circulation, and planning and operational considerations? [API 65–2 1.6].	Yes/No.
FLOW POTENTIAL		
3	Will a pre-spud hazard assessment be conducted for the proposed well site?	Yes/No.
4	List all potential flow zones within the well section to be cemented	Describe below.
5	Has the information concerning the type, location, and likelihood of potential flow zones been communicated to key parties (cementing service provider, rig contractor, or third parties)?	Yes/No.
CRITICAL DRILLING FLUID PARAMETERS		
6	Are fluid densities sufficient to maintain well-control without inducing lost circulation?	Yes/No.
CRITICAL WELL DESIGN PARAMETERS		
7	Will you use a cementing simulation model in the design of this well?	Yes/No.
7a	If yes, how is the output of this simulation model used in your decision-making process?	Describe below.
7b	If no, include discussion of why a model is not being used	Describe below.
7c	Either way, include the number and placement of centralizers being used	Describe below.
8	Will you ensure the planned top of cement will be 500 feet above the shallowest potential flow zone?	Yes/No.
9	Have you confirmed that the hole diameter is sufficient to provide adequate centralization?	Yes/No.
10	If there are any isolated annuli, how have you mitigated thermal casing pressure build-up?	NA or Describe below.
11	Will you ensure the well will be stable (no volume gain or losses, drilling fluid density equal in vs. out) before commencing cementing operations?	Yes/No.
12	List all annular mechanical barriers in your design	Describe below.
13	Has the rathole length been minimized or filled with drilling fluid with a density greater than the cement density?	Yes/No.
14a	If you have any liner top packers exposed to the production or intermediate annulus, what is the rating for differential pressure across this packer?	NA or Describe below.
14b	If you have any liner top packers exposed to the production or intermediate annulus, have you confirmed that your negative test will not exceed this rating?	Yes/No/NA.
15	What type of casing hanger lock-down mechanisms will be used?	Describe below.
16	For all intermediate and production casing hangers set in subsea, HP wellhead housing, will you immediately set/energize the lock-down ring prior to performing any negative test?	Yes/No.

TABLE 4—EXAMPLE OF HOW TO EVALUATE THE BEST PRACTICES IN API STANDARD 65—PART 2—Continued

17	For all production casing hangers set in subsea, HP wellhead housing, will you set/energize the lock-down sleeve immediately after running the casing and prior to performing any negative test?	Yes/No.
CRITICAL OPERATIONAL PARAMETERS		
18	Will you have 1 mechanical barrier in addition to cement in your final casing string (or liner if it is your final string)? ..	Yes/No.
19	Do you plan to nipple down BOP in accordance with the WOC requirements in 30 CFR 250.422?	Yes/No.
20	Do you plan on running a cement bond log on the production and intermediate casing/liner prior to conducting the negative test on that string?	Yes/No.
Are contingency plans in place for the following:		
21	Lost circulation?	Yes/No.
22	Unplanned shut-down?	Yes/No.
23	Unplanned rate change?	Yes/No.
24	Float equipment does not hold differential pressures?	Yes/No.
25	Surface Equipment issues?	Yes/No.
26	Will you monitor the annulus during cementing and WOC time?	Yes/No.
27	If using foam cement, is a risk assessment being conducted and incorporated into cementing plan?	Yes/No.
28	If using foam cement, will the foamer, stabilizer, and nitrogen injection be controlled by an automated process system?	Yes/No.
CRITICAL MUD REMOVAL PARAMETERS		
28	Have you tested your drilling fluid and cementing fluid programs for compatibility to reduce possible contamination?	Yes/No.
29	Have you considered actual well conditions when determining appropriate cement volumes?	Yes/No.
30	Has the spacer been modeled or designed to achieve the best possible mud removal?	Yes/No.
CRITICAL CEMENT SLURRY PARAMETERS		
31	Have all appropriate cement slurry parameters been considered to ensure the highest probability of isolating all potential flow zones?	Yes/No.
32	Do you plan on circulating bottom up prior to the start of the cement job?	Yes/No.

What must I include in the diverter and BOP descriptions? (§ 250.416)

The IFR revised § 250.416(d) to include the submission of a schematic drawing of all control systems, including primary control systems, secondary control systems, and pods for the BOP system. We did not revise this paragraph in the Final Rule.

The IFR revised § 250.416(e) to require the operator to submit independent third-party verification and supporting documentation that shows the blind-shear rams installed in the BOP stack are capable of shearing any drill pipe in the hole under maximum anticipated surface pressure, as recommended in the Safety Measures Report. In response to comments received, we emphasize that the blind-shear rams must be capable of shearing heavy weight drill pipe. The Final Rule also revises § 250.416(e) to clarify that drill pipe includes workstring and tubing. The IFR provided that the supporting documentation has to include test results, but did not specify which tests are required. The Final Rule clarifies that the documentation must include actual shearing and subsequent pressure integrity test results for the most rigid pipe to be used and calculations of shearing capacity of all

pipe to be used in the well, including correction for MASP.

The IFR added § 250.416(f) to require independent third-party verification that a subsea BOP stack is designed for the specific equipment used on the rig. In the Final Rule, we revised this paragraph to also include surface BOP stacks on floating facilities to clarify the intent that this verification is required for all floating drilling operations. This section also includes the requirements for verification that the BOP stack has not been compromised or damaged from previous service. BSEE realizes that an APD may be submitted prior to the third-party verification. Under such circumstances, BSEE may issue a condition of approval in the APD contingent on the third-party verification. The verification must be completed prior to BOP latch-up onto the associated well. The third-party verification will be submitted to BSEE in an APD or a revised sidetrack permit.

The IFR added § 250.416(g) to describe the criteria and documentation for an independent third-party that must be submitted with the APD to BSEE for review.

In the IFR, § 250.416(g)(1) of this section referenced the independent party in § 250.416(e). This Final Rule removes this reference, since the requirements for the independent third-

party in paragraph (g) apply to any use of the independent third-party in § 250.416.

We revised paragraph (g)(1) to specify that a registered professional engineer, or a technical classification society, or a licensed professional engineering firm, could qualify as the independent third-party under this section. We also removed the reference that the original equipment manufacturer (OEM) cannot be the independent third-party. We removed this prohibition so that the OEM, who has the expertise with the equipment, may function as the independent third-party under this section as long as it meets the requirements of the independent third-party outlined in this section.

Based on comments received, we have also revised qualifications for independent third parties to remove various standards that were not sufficiently objective or certain. We removed the provision from the IFR that the firm can be an API-licensed manufacturing, inspection, or certification firm, since API does not license such firms. We also removed the requirement that the firm must carry industry-standard levels of professional liability insurance, based on comments questioning how to determine “industry standard levels of professional liability insurance.” BSEE has not devised an

approach to make this determination. We removed the requirement that the firm provide evidence that it is “reputable” because such a standard is too vague. Similarly, we removed the requirement that a firm have no record of violations of applicable law because it is not clear what “applicable law” refers to and how far back the requirement applies, and because state licensure or registration will assure current compliance. In place of the requirements that were removed, in response to comments discussed earlier, we added that evidence be provided to demonstrate that the person or entity performing the third-party verification has the expertise and experience necessary to perform the required verifications. Thus, the Final Rule requires evidence of appropriate licenses and evidence of expertise and experience to perform the verifications.

We also revised paragraph (g)(2)(ii) to change the notification of the appropriate BSEE District Manager from 24 hours in advance of any shearing ram tests or shearing ram inspections to 72 hours in advance. This amount of time will facilitate having a BSEE representative present to witness at least one of these tests. See the discussion of § 250.416 in the IFR (75 FR 63357 through 63358) for additional information on this section.

What additional information must I submit with my APD? (§ 250.418)

This Final Rule revises § 250.418(g) by adding the phrase “below the mudline”. The revision is made to clarify the intent that the operator must submit a request for approval to wash out if the operator is washing out below the mudline, not for washing out the cement in all situations, as was previously provided.

The IFR added § 250.418(h), which requires operators to submit certifications of their casing and cementing program required by § 250.420(a)(6). Paragraph (h) is not revised in this Final Rule.

The IFR added § 250.418(i), requiring the operator to submit a description of qualifications of any independent third-party. Paragraph (i) is revised in this Final Rule by changing the cross reference in that paragraph to § 250.416(g), the paragraph that specifies the qualifications referred to instead of paragraph (f) as was provided in the IFR.

What well casing and cementing requirements must I meet? (§ 250.420)

The IFR added § 250.420(a)(6) that requires the operators to submit certification of their casing and

cementing program signed by a Registered Professional Engineer. In the IFR, § 250.420(a)(6) also included certification requirements pertaining to two independent tested barriers. This Final Rule reorganizes § 250.420(a)(6) to focus solely on the required certification and the role of the persons making the certification. This Final Rule moves the requirements pertaining to two independent barriers to § 250.420(b)(3), discussed below.

The Registered Professional Engineer signing the certification must be registered in a State of the United States. In response to comments about the qualifications of the person performing the certification, this Final Rule specifies that the person signing the certification must have sufficient expertise and experience to perform the certification. During the review process, BSEE may disallow a certification if it concludes that the certifier’s expertise and experience to perform the certification are inadequate. Although the regulation does not require that every certification be accompanied by documentation of the qualifications of the person performing the certification, BSEE may, on a case-by-case basis, request that such material be provided.

As was provided in the IFR, this Final Rule states that the Registered Professional Engineer reviewing the casing and cementing design must certify that the design is appropriate for the purpose for which it is intended, under expected wellbore conditions. We have also added that the certification must specify that the casing and cementing design is sufficient to satisfy the tests and requirements of §§ 250.420 and 250.423. In that manner, the certification ties into the substantive requirements of the regulations. Final § 250.420(a)(6) also provides that the Registered Professional Engineer must be involved in the casing and cementing design process. This requirement will assure that the Registered Professional Engineer will be familiar enough with the design process and the final design to make the required certification.

As mentioned above, this Final Rule moves the requirement pertaining to two independent barriers from § 250.420(a)(6) to final § 250.420(b)(3). In response to comments, this Final Rule revises this requirement to clarify the meaning of “two independent tested barriers.” We retained the requirement for two independent barriers, but removed the word “tested,” based on comments. The term “two independent tested barriers” was confusing. In response to comments inquiring as to which flow paths must have independent barriers, we clarify that on

all wells that use subsea BOP stacks, the well must include two independent barriers, including one mechanical barrier, in each of the annular flow paths. We also added examples of acceptable types of barriers, including primary cement job and seal assembly.

In the IFR, § 250.420(b)(3) required the operator to install dual mechanical barriers in addition to cement for the final casing string (or liner if it is the final string), to prevent flow in the event of a failure in the cement. This Final Rule provides, instead, that for the final casing string (or liner if it is the final string), an operator must install one mechanical barrier in addition to cement, to prevent flow in the event of a failure in the cement. We have clarified that this requirement applies to the final casing string or liner, since that is the string of casing that will be exposed to wellbore conditions. Final § 250.420(b)(3) states that an operator must submit documentation of this installation to BSEE in the End-of-Operations Report (Form BSEE-0125) instead of 30 days after installation, as was provided in the IFR. This Final Rule also adds that these barriers cannot be modified prior to or during completion or abandonment operations.

The IFR stated that dual mechanical barriers may include dual float valves. In response to comments, we clarify that a dual float valve, by itself, is not considered a mechanical barrier.

We also added a provision that clarifies that the BSEE District Manager may approve alternative options. Although operators may apply for approval for use of alternative producers of equipment under existing BSEE regulations at § 250.141, we mention it specifically in this provision because we recognize that there are other approaches to prevent flow in the event of a failure in the cement.

What are the requirements for pressure testing casing? (§ 250.423)

The IFR reorganized § 250.423 to accommodate new requirements, redesignated the previous regulation as § 250.423(a) and added new § 250.423(b) and (c). Paragraph (b) was added to require the operator to perform a pressure test on the casing seal assembly to ensure proper installation of casing or liner in the subsea wellhead or liner hanger. Paragraph (c) was added to require the operator to perform a negative pressure test on all wells to ensure proper installation of casing for the intermediate and production casing strings.

This Final Rule revises § 250.423(a) to clarify that if pressure declines more than 10 percent in a 30-minute test, or

there is an indication of a leak, the operator must investigate the cause and receive approval from the appropriate BSEE District Manager for the repair (e.g., re-cement, casing repair, or additional casing). BSEE revised the language to state that BSEE approval is needed.

This Final Rule, slightly rearranges § 250.423(b) for clarification to state, “You must ensure proper installation of casing in the subsea wellhead or liner in the liner hanger.” This Final Rule also revises §§ 250.423(b)(1) from the IFR by separating the requirements for casing strings and liners into paragraphs (b)(1) and a new paragraph (b)(2), respectively.

New § 250.423(b)(2) provides that if the liner has a latching or lock down mechanism, the operator must ensure that the mechanism is engaged upon installation of the liner. This new provision clarifies that BSEE does not require the use of a latching or lock down mechanism, but if the mechanisms are used, they must be engaged upon installation.

The subsequent paragraphs, numbered as §§ 250.423(b)(2), (b)(3), and (b)(4) in the IFR, are renumbered as §§ 250.423(b)(3), (b)(3)(i), and (b)(3)(ii) in this Final Rule.

In response to comments, this Final Rule revises § 250.423(c) to require a negative pressure test be performed only on wells that use a subsea BOP stack or wells with a mudline suspension system instead of on all wells, as was provided in the IFR. Requiring the performance of negative pressure tests on wells that use a surface BOP stack is not necessary; it is more important to test the barriers in subsea wells and wells with a mudline suspension.

In response to comments, this Final Rule adds new §§ 250.423(c)(1) and (c)(2) to clarify when the negative pressure test must be performed. We specifically require the operator to perform a negative pressure test on the final casing string or liner. We also require a negative pressure test prior to unlatching the BOP. The negative pressure test is to be conducted on those components, at a minimum, that will be exposed to the negative differential pressure that will occur when the BOP is disconnected. The Final Rule provides that the BSEE District Manager may require performance of additional negative pressure tests on other casing strings or liners (e.g., intermediate casing string or liner) or on wells with a surface BOP stack in situations where it is appropriate. BSEE is requiring the negative pressure test on the final casing string or liner because the operator may

decide to continue other operations on the well before the BOP is disconnected.

The subsequent paragraphs that were numbered §§ 250.423(c)(1) and (c)(2) in the IFR have been redesignated as §§ 250.423(c)(3) and (c)(4). The redesignated § 250.423(c)(3) is revised to clarify that if any of the test procedures or criteria for a successful test change, the operator must submit for approval the changes in an Revised APD or APM.

In response to comments, we added new paragraph (c)(5) to this section, which addresses what the operator must do in the event of an indication of a failed negative pressure test and includes examples of an indication of failure (pressure buildup or observed flow). The operator must investigate the cause of the possible failure, correct the problem, contact the appropriate BSEE District Manager, submit a description of the corrective action taken, and receive approval from the appropriate BSEE District Manager for the retest. Although a prudent operator would likely follow these steps in the absence of a regulatory provision, inclusion of paragraph (c)(5) is intended to provide assurance that these steps will occur, and also ensure that BSEE will be involved in these situations.

This Final Rule also adds § 250.423(c)(6), clarifying that operators must have two barriers in place prior to performing the negative pressure test. This safeguard is necessary to protect against well failure.

This Final Rule also adds § 250.423(c)(7), requiring documentation of the successful negative pressure test in the End-of-Operations Report (Form BSEE-0125).

What must I do in certain cementing and casing situations? (§ 250.428)

This Final Rule revises § 250.428(c) by removing § 250.428(c)(1) which allowed an operator to pressure test the casing shoe when the operator has an indication of an inadequate cement job. This section was removed because the pressure test of the casing shoe does not provide sufficient information to evaluate the integrity of the cement job. This change is consistent with other revisions in the IFR and this Final Rule and necessary to ensure the integrity of the cement job. This Final Rule revises § 250.428(c) to include “gas cut mud” as an indication of an inadequate cement job. The option to perform a cement “bond” log in paragraph (c)(3) is revised to allow operators to perform a cement “evaluation” log instead. This option was changed in the Final Rule to allow operators more flexibility to incorporate the use of newer technology to assess the cement job other than a bond log;

however, an operator may still use a bond log as an evaluation tool. With previous § 250.428(c)(1) removed, the Final Rule renumbers the remaining paragraphs as § 250.428(c)(1), (c)(2), and (c)(3).

What are the requirements for a subsea BOP system? (§ 250.442)

Section 250.442 requires that when drilling with a subsea BOP system, the BOP system must be installed before drilling below the surface casing. The table in this section outlines specific BOP requirements.

Paragraph (a) was revised in the IFR to clarify that the blind-shear rams must be capable of shearing any drill pipe in the hole under maximum anticipated surface pressures. In response to comments, this Final Rule revises § 250.442(a) to clarify that drill pipe includes workstring and tubing.

The IFR redesignated the requirement in previous § 250.442(d) to have an operable dual-pod control system as new § 250.442(b), without substantive change. This Final Rule does not modify the redesignated paragraph.

The IFR added § 250.442(d), containing requirements related to ROV intervention capability. This Final rule does not modify these requirements.

The IFR added § 250.442(e), requiring operators to maintain an ROV and have a trained ROV crew on each floating drilling rig on a continuous basis. This Final Rule modifies § 250.442(e) by removing the word “floating”, which conflicted with the table heading “when drilling with a subsea BOP system” and created confusion as to the agency’s intent. This Final Rule clarifies that when drilling with a subsea BOP system, the operator must maintain an ROV and have a trained ROV crew on each drilling rig (floating or not) on a continuous basis once BOP deployment has been initiated from the rig (the stack has been splashed) until the BOP is recovered to the surface.

The IFR added § 250.442(f), containing requirements related to autoshear and deadman systems. This Final Rule revises §§ 250.442(f)(1) and (2) in the IFR to specify that the autoshear system and deadman system must each be able to close, at a minimum, one set of blind-shear rams, instead of one set of shear rams. We revised the language to ensure that the shearing rams, when activated, will be capable of sealing the wellbore. We also revised § 250.442(f)(3) to clarify that the acoustic system will be a secondary control system, and cannot supplant a required control system. This Final Rule provides that if an operator intends to install an acoustic control system, it

must demonstrate to BSEE, as part of the information submitted under § 250.416, that the acoustic system will function in the anticipated environment and conditions.

The following paragraphs were added in the IFR: § 250.442(g), requiring the operator to have operational or physical barrier(s) on BOP control panels to prevent accidental use of disconnect functions; § 250.442(h), requiring the operator to clearly label all control panels for the subsea BOP system; § 250.442(i), requiring the operator to develop and use a management system for operating the BOP system (the operator may include this with its SEMS program as described in 30 CFR 250 subpart S); and § 250.442(j), requiring the operator to establish minimum requirements for personnel authorized to operate critical BOP equipment. This Final Rule does not revise these paragraphs.

This Final Rule removes § 250.442(l), addressing the use of BOP systems in ice-scour areas. This paragraph duplicated § 250.451(h), and does not need to appear in two places in the CFR.

What associated systems and related equipment must all BOP systems include? (§ 250.443)

This Final rule revises § 250.443(g) to clarify that all BOP systems must include a wellhead assembly with a rated working pressure that exceeds the maximum anticipated wellhead pressure instead of the maximum anticipated surface pressure as was previously provided. This revision clarifies what is required when using subsea systems and is made to be as consistent as possible with a recommendation in the DWH JIT report.

What are the BOP maintenance and inspection requirements? (§ 250.446)

The IFR revised § 250.446(a) to require the operator to document the procedures used and to record the results of BOP system maintenance and inspection actions, and make the records available to BSEE upon request. This Final Rule further revises § 250.446(a) to clarify that the documentation requirements pertain to how the BOP system maintenance and inspections met or exceeded the specific API RP 53 provisions referenced earlier in that section.

The IFR specified that the documents required in § 250.446(a) must be maintained on the rig for two years or from the date of the last major inspection, whichever is longer. The rule did not state how long from the date of the last major inspection the records must be kept. To clarify and

simplify the timeframe for keeping records, the Final Rule provides that records must be maintained on the rig for two years from the date the records are created or for longer if directed by BSEE.

The requirement for the BOP system maintenance and inspection records to be maintained on the rig for a minimum of two years will assure that the records will be kept at the location of, and follow, the BOP system if and when the rig changes locations. This requirement will help ensure that persons responsible for using a BOP system in the future will be able to identify any earlier problems with the BOP system and will be able to take necessary steps to try to prevent recurrence of such problems.

As with other activities they perform, drilling contractors who control the drilling rig and perform BOP system maintenance and inspections are responsible for the documentation and recordkeeping requirements of § 250.446(a), see § 250.146(c). Failure to satisfy these obligations will subject all responsible persons, including contractors, to BSEE enforcement.

Once the two year obligation for maintaining records begins, a contractor controlling the rig will continue to have the record-keeping responsibility even if the rig subsequently moves and is used for drilling on different leases with different operators. To satisfy their obligations, the original lessee and operator will need to obtain assurance from a contractor in possession of the BOP system maintenance and inspection records for the wells on its lease that the records will be kept and made available to BSEE for the required period.

What additional BOP testing requirements must I meet? (§ 250.449)

In conjunction with the changes from the IFR regarding stump test requirements, this Final Rule revises § 250.449(b) to clarify that the time lapse between the stump test of a subsea BOP system and the initial test of a subsea BOP system on the seafloor must not exceed 30 days. This practice is already common in industry and BSEE policy. The IFR added § 250.449(j) requiring certain testing during the stump test and during the initial testing on the seafloor, but did not specify the temporal relationship between the two sets of tests. This Final Rule clarifies the timing.

This revision is intended to help ensure that the condition of a BOP has not deteriorated between the stump test and the actual use of the BOP. The previous rules did not have a timeframe

between the BOP system stump test and the initial BOP system test on the seafloor. In response to operator inquiries, BSEE's Gulf of Mexico region established a policy that BOP system stump tests are to be performed within 30 days of the initial BOP system test on the seafloor, to preclude reliance upon stump tests that do not accurately reflect the condition of the BOP system at the time of installation. This Final Rule codifies that policy, and will ensure that operators will not rely upon older stump tests to satisfy § 250.449(b). This provision is not expected to impact operations to any great degree because stump tests of subsea BOP systems typically occur shortly before BOP systems are initially installed.

The IFR made slight editorial changes to §§ 250.449(h) and (i) to account for the new paragraphs following those sections. This Final Rule makes no further changes to §§ 250.449(h) and (i).

The IFR added §§ 250.449(j) and (k). In response to comments that the BOP tests are insufficient, we revised § 250.449(j) to require the operator to test and verify closure of at least one set of rams during the initial test on the seafloor through an ROV hot stab and to clarify that each ROV must be fully compatible with the BOP stack intervention panels. The Final Rule also clarifies that when an operator submits the test procedures to BSEE for approval, the operator must include how it will test each ROV intervention function.

This Final Rule also adds a new paragraph, § 250.449(j)(2), which requires a 72-hour notification prior to the initiation of a stump test and initial test on the seafloor. Operators must notify BSEE at least 72 hours prior to all BOP stump tests and initial BOP tests on the seafloor to facilitate having a BSEE representative present to witness at least one of these tests. The subsequent paragraph, § 250.449(j)(2) in the IFR, has been redesignated as § 250.449(j)(3) in this Final Rule.

In response to comments, this Final Rule revises § 250.449(k) to require the operator to test the deadman system and verify closure of a set of blind-shear rams during the initial test on the seafloor. The Final rule also adds new clarification to ensure that the well is secure and that hydrocarbon flow would be isolated during the initial deadman test on the seafloor. For example if hydrocarbons are present in the well, the hydrocarbon flow could be isolated by closing appropriate production safety devices, required in subpart H of this part, installing plugs, and/or cementing. Also to help mitigate risk for the function test of the deadman system

during the initial test on the seafloor, we added a provision that there must be an ROV on bottom. The ROV is located on bottom to assist in the testing, as needed, and as a back-up to disconnect the LMRP should the rig experience a loss of station event.

In response to comments BSEE also revised final § 250.449(k)(1) to clarify that the required submittals of procedures for the autoshear and deadman function testing must include documentation of the controls and circuitry of the system utilized during each test. This documentation is necessary to verify that the same deadman controls are used in testing and emergency activation. This Final Rule also specifies that the submittals include procedures on how the ROV will be utilized during testing.

For the same reasons, BSEE made corresponding changes in final §§ 250.517(d)(9), 250.617(h)(2), and 250.1707(h)(2).

What must I do in certain situations involving BOP equipment or systems? (§ 250.451)

As described above, this Final Rule revises § 250.451(h), to replace the term “glory hole” with the term “well cellar.” This Final Rule also adds new § 250.451(j) stating that before an operator removes the BOP it must have two barriers in place, and that the BSEE District Manager may require additional barriers. This provision was added to provide clarification for barrier requirements prior to removing the BOP stack, and is a safeguard necessary to protect against well failure. This regulation is intended to apply to normal, planned operations; however, if the operator encounters an unexpected situation as outlined in § 250.402, the operator should still follow those guidelines as appropriate.

What safe practices must the drilling fluid program follow? (§ 250.456)

The IFR redesignated then existing § 250.456(j) as § 250.456(k) and added a new § 250.456(j) to require approval from the BSEE District Manager before displacing kill-weight fluid from the wellbore.

This Final Rule revises § 250.456(j) to clarify that the operator must receive prior approval before displacing kill-weight fluid from the wellbore and/or riser to an underbalanced state. The IFR required prior approval whenever kill-weight fluid would be displaced from the wellbore, even if the wellbore would not be underbalanced. It is not necessary to receive approval if the wellbore will remain in an overbalanced state.

This Final Rule also revises § 250.456(j)(1) to conform the flow path description to that contained in § 250.420(b)(3), and § 250.456(j)(4) to clarify that the monitoring procedures are required for monitoring the volumes and rates of fluids entering and leaving the wellbore.

Approval and Reporting of Well-Completion Operations (§ 250.513)

In this Final Rule, we added a new § 250.513(b)(4) as a conforming procedural amendment requiring the operator to submit with the APD or APM the BOP descriptions for well-completion operations required in the new § 250.515. This new paragraph does not require information in addition to that already required, but will ensure information required under the new § 250.515 is submitted with the APD or APM. To accommodate the new paragraph (b)(4), this Final Rule redesignates previous §§ 250.513(b)(4) and (b)(5) as §§ 250.513(b)(5) and (b)(6).

Well-Control Fluids, Equipment, and Operations (§ 250.514)

In response to comments that requirements for well-completion and drilling should be consistent, this Final Rule adds § 250.514(d). This new paragraph makes the requirements for well-control fluids for well-completions consistent with the requirements for drilling (§ 250.456(j)). As with the drilling requirements, before displacing kill-weight fluid from the wellbore and/or riser to an underbalanced state, the operator must obtain approval from the appropriate BSEE District Manager. To obtain this approval, the operator must submit with the APD or APM the reasons for displacing the kill-weight fluid and provide detailed step-by-step written procedures describing how this will be done. The step-by-step displacement procedures must address the following:

- (1) Number and type of independent barriers that are in place for each flow path that requires such barriers,
- (2) Tests the operator will conduct to ensure integrity of independent barriers,
- (3) BOP procedures the operator will use while displacing kill-weight fluids, and
- (4) Procedures the operator will use to monitor the volumes and rates of fluids entering and leaving the wellbore.

What BOP information must I submit? (§ 250.515)

In response to comments, this Final Rule adds a new § 250.515 which conforms well-completion BOP information requirements to those of the drilling and workover subparts, where

the same type of equipment may be used, and similar safety risks exist. To accommodate the new section, this Final Rule redesignates §§ 250.515 through 250.530 as §§ 250.516 through 250.531.

New § 250.515 requires operators to include BOP descriptions in the APM for well-completion operations. The operator must include a description of the BOP system and system components and a schematic drawing of the BOP system. The operator must also include independent third-party verification and supporting documentation that show the blind-shear rams installed in the BOP stack are capable of shearing any drill pipe (including workstring and tubing) in the hole under maximum anticipated surface pressure. The documentation must include actual test results and calculations of shearing capacity of all pipe that will be used in the well including correction for MASP. The operator must also include, when using a subsea BOP stack, independent third-party verification that shows: The BOP stack is designed for the specific equipment on the rig and for the specific well design; the BOP stack has not been compromised or damaged from previous service; and the BOP stack will operate in the conditions in which it will be used.

Final § 250.515(e) requires operators to include the qualifications of the independent third-party performing the verifications. The independent third-party must be a registered professional engineer, or from a technical classification society, or a licensed professional engineering firm capable of providing the verifications required under this part. In the qualifications, the operator must include evidence that the registered professional engineer, or a technical classification society, or engineering firm the operator is using to perform the verification or its employees hold appropriate licenses to perform the verification in the appropriate jurisdiction and evidence to demonstrate that the individual, society, or firm has the expertise and experience necessary to perform the required verifications. The operator must ensure that an official representative of BSEE will have access to the location to witness any testing or inspections, and verify information submitted to BSEE. Prior to any shearing ram tests or inspections, the operator must notify the BSEE District Manager at least 72 hours in advance. This new section makes the requirements for submission of BOP information for well-completions consistent with the requirements in subpart D (§§ 250.416(c) through (g)).

Blowout Prevention Equipment
(§ 250.515 in the Interim Final Rule,
Redesignated as § 250.516 in This Final
Rule)

The IFR added the requirements of § 250.442 in subpart D, Oil and Gas Drilling Operations, to the requirements in § 250.515 for well-completion operations using a subsea BOP stack. This Final Rule redesignates § 250.515 in the IFR as § 250.516, but makes no further changes to that section.

Blowout Preventer System Tests, Inspections, and Maintenance
(§ 250.516 in the Interim Final Rule,
Redesignated as § 250.517 in This Final
Rule)

The IFR added § 250.516(d)(8) to require tests for ROV intervention functions during the stump test and § 250.516(d)(9) to require a function test of the autoshear and deadman system. This Final Rule redesignates § 250.516 as § 250.517.

This Final Rule revises redesignated § 250.517(d)(2) to specify that the time lapse between the stump test of a subsea BOP system and initial BOP system test on the seafloor must not exceed 30 days; see the discussion of § 250.449(b) earlier in this preamble concerning inclusion of the same timeframe in subpart D.

This Final Rule revises redesignated § 250.517(d)(8) to require the operator to test and verify closure of at least one set of rams during the initial test on the seafloor through an ROV hot stab, and that each ROV must be fully compatible with the BOP stack intervention panels. This Final Rule also adds a requirement that when an operator submits the test procedures, it must include how it will test each ROV function. This Final Rule adds a 72-hour notification requirement in § 250.517(d)(8)(ii). Operators are required to notify BSEE at least 72 hours prior to all BOP stump tests and initial BOP tests on the seafloor to facilitate having a BSEE representative present to witness at least one of these tests. Changes to redesignated § 250.517(d)(8) are consistent with changes to final § 250.449(j) as discussed earlier.

This Final Rule revises redesignated § 250.517(d)(9) to require the operator to test the deadman system and verify closure of a set of blind-shear rams during the initial test on the seafloor. The verification requirement is new and is consistent with revised § 250.449(k).

The IFR revised previous §§ 250.516(g) and (h) to expand and clarify the requirements for BOP inspections and maintenance. This Final Rule revises redesignated §§ 250.517(g) and (h) to clarify the documentation requirements include

showing how an operator met or exceeded specific API RP 53 sections. This Final Rule also revises redesignated §§ 250.517(g) and (h) to clarify the recordkeeping timeframe to require that an operator must maintain records on the rig for two years from the date of creation or for longer if directed by BSEE.

This Final Rule revises redesignated § 250.517(g)(2) to be consistent with the subsea BOP system and marine riser inspection requirements in subpart D, § 250.446(b). It requires the visual inspection of surface BOP systems on a daily basis. It requires the visual inspection of subsea BOP systems and marine risers at least once every three days, instead of every day as was provided in the IFR. This revision reduces the number of required inspections of subsea BOP systems and marine risers.

Approval and Reporting of Well-Workover Operations (§ 250.613)

This Final Rule adds a new § 250.613(b)(3) that requires an operator to submit, with its APM, the information required in the new § 250.615. This new paragraph was added to ensure that BOP descriptions for well-workover operations, required under the new § 250.615, will be submitted with the APM. To accommodate the new § 250.613(b)(3), this Final Rule redesignates §§ 250.613(b)(3) and (b)(4) as §§ 250.613(b)(4) and (b)(5).

Well-Control Fluids, Equipment, and Operations (§ 250.614)

In response to comments, this Final Rule adds a new § 250.614(d). This new paragraph makes the requirements for well-control fluids for well-workover operations consistent with the requirements in subpart D (§ 250.456(j)). As with the drilling requirements, before displacing kill-weight fluid from the wellbore to an underbalanced state, the operator must obtain approval from the appropriate BSEE District Manager. To obtain this approval, the operator must submit, with the APM, the reasons for displacing the kill-weight fluid, and provide detailed step-by-step written procedures describing how this will be accomplished. The step-by-step displacement procedures must address the following:

- (1) Number and type of independent barriers that are in place for each flow path,
- (2) Tests the operator will conduct to ensure integrity of independent barriers,
- (3) BOP procedures the operator will use while displacing kill-weight fluids, and

(4) Procedures the operator will use to monitor the volumes and rates of fluids entering and leaving the wellbore.

What BOP information must I submit?
(§ 250.615)

In response to comments, this Final Rule adds a new section, § 250.615. This new section makes the requirements for submission of BOP information for well-completions consistent with the requirements in subpart D (§§ 250.416(c) through (g)). This section requires operators to include BOP descriptions in the APM for well-completion operations. The operator must include a description of the BOP system and system components, and a schematic drawing of the BOP system. The operator must also include independent third-party verification and supporting documentation that show the blind-shear rams installed in the BOP stack are capable of shearing any drill pipe (including workstring and tubing) in the hole under maximum anticipated surface pressure. The documentation must include actual test results and calculations of shearing capacity of all pipes to be used in the well, including correcting for MASP. Operators must also include, when using a subsea BOP stack, independent third-party verification that shows: The BOP stack is designed for the specific equipment on the rig and for the specific well design; the BOP stack has not been compromised or damaged from previous service; and the BOP stack will operate properly in the conditions in which it will be used.

The operators must include qualifications of the independent third-party. The independent third-party in this section must be a registered professional engineer, or a technical classification society, or a licensed professional engineering firm capable of providing the verifications required under this part. In the qualifications, the operator must include evidence that the registered professional engineer, or a technical classification society, or engineering firm the operator is using to perform the verification or its employees holds appropriate licenses to perform the verification in the appropriate jurisdiction, and evidence to demonstrate that the individual, society, or firm has the expertise and experience necessary to perform the required verifications. The operator must ensure that an official representative of BSEE will have access to the location to witness any testing or inspections, and verify information submitted to BSEE. Prior to any shearing ram tests or inspections, the operator must notify the BSEE District Manager

at least 72 hours in advance to facilitate having a BSEE representative present to witness at least one of these tests.

To accommodate the new section, this Final Rule redesignates previous §§ 250.615 through 250.619 as §§ 250.616 through 250.620.

Blowout Prevention Equipment
(§ 250.615 in the Interim Final Rule, Redesignated as § 250.616 in Final Rule)

The IFR added new §§ 250.615(b)(5) and (e) that applied the requirements of § 250.442 in subpart D, Oil and Gas Drilling Operations, to well-workover operations using a subsea BOP stack. This Final Rule redesignates this section as § 250.616, but does not substantively change the IFR.

Blowout Preventer System Testing, Records, and Drills (§ 250.616 in the Interim Final Rule IFR, Redesignated as § 250.617 in This Final Rule)

The IFR added § 250.616(h) to require an operator to stump test a subsea BOP system before installation. It added § 250.616(h)(1) to require tests for ROV intervention functions during the stump test, § 250.616(h)(2) to require a function test of the autoshear and deadman system, and § 250.616(h)(3) to require the use of water to stump test a subsea BOP system. This Final Rule redesignates this section as § 250.617.

This Final Rule revises redesignated § 250.617(h) to be consistent with final §§ 250.449 and 250.517. It requires that the initial test on the seafloor must be conducted within 30 days of the stump test of the subsea BOP stack. This subsection does not add a new requirement; it just specifies the timing of the test. This Final Rule revises redesignated § 250.617(h)(1) to require the operator to test and verify closure of at least one set of rams during the initial test on the seafloor through an ROV hot stab and that each ROV must be fully compatible with the BOP stack intervention panels. It also adds that when an operator submits the test procedures it must include how it will test each ROV function.

The Final Rule also adds § 250.617(h)(1)(ii) which includes a notification provision requiring operators to notify BSEE at least 72 hours prior to all BOP stump tests and initial BOP tests on the seafloor to facilitate having a BSEE representative present to witness at least one of these tests. This Final Rule revises redesignated § 250.617(h)(2) to require the operator to test the deadman system and verify closure of a set of blind-shear rams during the initial test on the seafloor. This Final Rule moves the contents of redesignated

§ 250.617(h)(2)(iii) into the general text of § 250.617(h).

What are my BOP inspection and maintenance requirements? (§ 250.617 in the Interim Final Rule, § 250.618 in the Final Rule)

The IFR added § 250.617 to apply the requirements of § 250.446 in subpart D, Oil and Gas Drilling Operations, to the inspections and maintenance requirements for well-workover operations using a subsea BOP stack. This Final Rule redesignates § 250.617 as § 250.618. This Final Rule revises redesignated § 250.618(a) to clarify that the documentation requirements include showing how an operator met or exceeded specific API RP 53 sections. It also clarifies the recordkeeping timeframe to require records to be maintained on the rig for 2 years from the date the records are created or for longer if directed by BSEE. The previous text was confusing.

This Final Rule also revises redesignated §§ 250.618(a)(2) to be consistent with the subsea BOP system and marine riser inspection requirements in subpart D, § 250.446(b). It requires the visual inspection of surface BOP systems on a daily basis. It requires the visual inspection of subsea BOP systems and marine risers at least once every 3 days, instead of every day. This revision reduces the number of required inspections of the subsea BOP system and marine riser.

Definitions (§ 250.1500)

In the IFR, BOEMRE added separate definitions for the terms *deepwater well-control*, *well servicing* and *well-completion/well-workover*. This Final Rule makes no further changes to those definitions.

We have clarified the definition of *well-control* to be as consistent as possible with recommendations in the DWH JTT report. In the Final Rule we also clarify that *well-control* applies to abandonment operations. The Final Rule provides that *well-control* means methods used to minimize the potential for the well to flow or kick and to maintain control of the well in the event of flow or a kick. *Well-control* applies to drilling, well-completion, well-workover, abandonment, and well-servicing operations. It includes measures, practices, procedures and equipment, such as fluid flow monitoring, to ensure safe and environmentally protective drilling, completion, abandonment, and workover operations as well as the installation, repair, maintenance, and operation of surface and subsea well-control equipment.

Inclusion of this revised definition in subpart O will facilitate the establishment of minimum training standards for persons monitoring and maintaining well-control. This new definition encompasses anyone who has the responsibility for monitoring the well and/or maintaining the well-control equipment for well control purposes.

What are my general responsibilities for training? (§ 250.1503)

In the IFR, the operator is required to ensure that employees and contract personnel are trained in deepwater well-control when conducting operations with a subsea BOP stack. They must have a comprehensive knowledge of deepwater well-control equipment, practices, and theory. We did not make any changes to this section in the Final Rule.

When must I submit decommissioning applications and reports? (§ 250.1704)

This Final Rule revises § 250.1704(g) by adding § 250.1704(g)(1)(ii) to provide clarification that when an operator uses a BOP for abandonment operations, it must include the information required under § 250.1705, discussed below.

What BOP information must I submit? (§ 250.1705)

In response to comment, this Final Rule adds § 250.1705. BSEE received a comment stating that some BOP requirements were omitted in subparts E and F that should be included to ensure consistency of BOP requirements with subpart D. We agree with this comment and have made the appropriate changes in those subparts. This reasoning has also led us to conclude these requirements should also be extended to subpart Q. The same BOP equipment may be used in abandonment operations as is used in operations under the other subparts. Attendant safety risks are also similar and justify imposition of the same regulatory oversight in subpart Q as that contained in the other subparts.

Final Rule § 250.1705 requires operators to include BOP descriptions in the APM for well-completion operations. The operator must include a description of the BOP system and system components and a schematic drawing of the BOP system. The operator must also include independent third-party verification and supporting documentation that show the blind-shear rams installed in the BOP stack are capable of shearing any drill pipe (including workstring and tubing) in the hole under maximum anticipated surface pressure. The documentation must include test results and

calculations of shearing capacity of all pipe to be used in the well, including correction for MASP. The operator must also include, when using a subsea BOP stack, independent third-party verification that shows: the BOP stack is designed for the specific equipment on the rig and for the specific well design; the BOP stack has not been compromised or damaged from previous service; and the BOP stack will operate in the conditions in which it will be used.

The operators must include qualifications of the independent third-party. The independent third-party in this section must be a registered professional engineer, or technical classification society, or a licensed professional engineering firm capable of providing the verifications required under this part. In the qualifications, the operator must include evidence that the registered professional engineer, or a technical classification society, or engineering firm it is using to perform the verifications or its employees hold appropriate licenses to perform the verification in the appropriate jurisdiction, and evidence to demonstrate that the individual, society, or firm has the expertise and experience necessary to perform the required verifications. The operator must ensure that an official representative of BSEE will have access to the location to witness any testing or inspections, and verify information submitted to BSEE. Prior to any shearing ram tests or inspections, the operator must notify the BSEE District Manager at least 72 hours in advance. This new section makes the requirements for submission of BOP information for well-completions consistent with the requirements in subpart D (§ 250.416(c) through (g)).

What are the requirements for blowout prevention equipment? (§ 250.1706)

BSEE received a comment stating that BOP requirements were omitted in subparts E and F. We agree with this comment; it is important for BOP requirements to be consistent, regardless of the application. We have made the appropriate changes in those subparts and also have included these requirements in subpart Q for abandonment operations that use a BOP system. In response to the comment, this Final Rule adds § 250.1706, which also adds consistency for BOP requirements between subparts. If the operator plans to use a BOP for any well abandonment operations, the BOP must meet the same requirements as those in subpart F, § 250.616.

What are the requirements for blowout preventer system testing, records, and drills? (§ 250.1707)

BSEE received a comment stating that BOP requirements were omitted in subparts E and F. We agree with this comment; it is important for BOP requirements to be consistent, regardless of the application. We have made the appropriate changes in those subparts and also have included these requirements in subpart Q for abandonment operations that use a BOP system. Since the new sections are added for BOP requirements in subpart Q, this Final Rule also adds § 250.1707 to ensure operators meet the same testing and recordkeeping requirements as those in subparts D, E, and F.

What are my BOP inspection and maintenance requirements? (§ 250.1708)

BSEE received a comment stating that BOP requirements were omitted in subparts E and F. We agree with this comment; it is important for BOP requirements to be consistent, regardless of the application. We have made the appropriate changes in those subparts and also have included these requirements in subpart Q for abandonment operations that use a BOP system. Since the new sections are added for BOP requirements in subpart Q, this new section is added to the Final Rule to ensure operators maintain and inspect the BOP equipment as required in subparts D, E, and F.

What are my well-control fluid requirements? (§ 250.1709)

In response to comments, we added a new section in the Final Rule. This new section makes the requirements for well-control fluids for well abandonment consistent with the requirements for drilling (§ 250.456(j)). As with the drilling requirements, before displacing kill-weight fluid from the wellbore to an underbalanced state, the operator must obtain approval from the appropriate BSEE District Manager. To obtain this approval, the operator must submit with the APM the reasons for displacing the kill-weight fluid and provide detailed step-by-step written procedures describing how the displacement will be accomplished. The step-by-step displacement procedures must address the following:

- (1) Number and type of independent barriers that are in place for each flow path,
- (2) Tests you will conduct to ensure integrity of independent barriers,
- (3) BOP procedures you will use while displacing kill-weight fluids, and

(4) Procedures you will use to monitor the volumes and rates of fluids entering and leaving the wellbore.

What information must I submit before I permanently plug a well or zone? (§ 250.1712)

In the IFR, a new paragraph (g) was added and paragraphs (e) and (f)(14) were revised to accommodate the new paragraph. New paragraph (g) requires operators to submit certification by a Registered Professional Engineer of the well abandonment design and procedures. The Registered Professional Engineer must be registered in a state of the United States and have sufficient expertise and experience to perform the certification. The Registered Professional Engineer does not have to be licensed for a specific discipline, but must be capable of reviewing and certifying that the casing design is appropriate for the purpose for which it is intended under expected wellbore conditions. The IFR provided that the Registered Professional Engineer certifies that there will be at least two independent tested barriers, including one mechanical barrier, across each flow path during well abandonment activities. The IFR also provided that the Registered Professional Engineer certify that the plug meets the requirements in the table in § 250.1715.

In response to comments, the language in the Final Rule paragraph (g) was clarified that the Registered Professional Engineer must certify the well abandonment design and that all applicable plugs meet the requirements in the table in § 250.1715. In response to comments related to § 250.420(b)(3) discussed earlier, the Registered Professional Engineer must also certify that the design will include two independent barriers, one of which must be a mechanical barrier, in the center wellbore, as described in § 250.420(b)(3).

How must I permanently plug a well? (§ 250.1715)

The Final Rule adopts a conforming change to § 250.1715 by adding paragraph (a)(11) which ensures that two independent barriers, as described in § 250.420(b)(3), will be put in place for abandonment if the barriers have been removed for production. Both the IFR and this Final Rule already require certification of the design of such barriers in § 250.1712(g), and the amendment to § 250.1715 is necessary to accompany the certification.

If I temporarily abandon a well that I plan to re-enter, what must I do? (§ 250.1721)

In the IFR, new paragraph (h) was added to require operators to submit certification by a Registered Professional Engineer of the well abandonment design and procedures.

In response to comments, language in paragraph (h) in the Final Rule was clarified that the Registered Professional Engineer must certify the well

abandonment design and procedures. The Registered Professional Engineer must also certify that the design includes two independent barriers in the center wellbore and all annuli, one of which must be a mechanical barrier. The text has been modified from the IFR to be consistent with the requirements of § 250.420(b)(3).

VI. Compliance Costs

The IFR contained a table estimating compliance costs on a section-by-

section basis. Since the IFR was published, we have reanalyzed compliance costs based on actual experience under the rule. In addition, this Final Rule modifies various provisions of the IFR. The following table provides a summary comparison between the compliance costs of the IFR and this Final Rule. The following table demonstrates that the estimated compliance costs have decreased by approximately 52 million dollars.

ESTIMATED COMPLIANCE COSTS COMPARISON BETWEEN THE INTERIM FINAL RULE AND THE FINAL RULE

Annual recurring costs	IFR (\$ millions)	Final Rule (\$ millions)	Compliance cost change between IFR and Final Rule
Subsea ROV function testing (drilling)	102.7	17.1	Estimated time was reduced. BSEE over estimated the time required for the subsea tests.
Subsea ROV function testing (completions/workover/ abandonments).	15.5	5.5	Estimated time was reduced. BSEE over estimated the time required for the subsea tests. Count of abandonment operations added to revised count of workover/completions.
Test casing strings for proper installation (negative pressure test).	45.1	12.8	Regulation was changed and the count of actions is reduced. BSEE no longer requires a negative pressure test on all intermediate casing strings, only the final casing before the subsea BOP is removed.
Installation of two independent barriers, one of which must be a mechanical barrier.	10.3	83.0	Regulation was changed from dual mechanical barriers. A dual float valve no longer meets the definition of a mechanical barrier. The estimated time to install the mechanical barrier increased to 12 hours.
PE certification for well design	6.0	3.9	Cost estimate reduced because the large companies drilling in shallow water are now assumed to have Professional PE available for in-house certification.
Emergency cost of activated shear rams or LMRP disconnect.	2.6	2.6	No change.
Independent third-party shear certification	1.2	1.2	No change.
Paperwork Costs taken from PRA tables in IFR & Final Rule.	0.0	4.6	Paperwork costs were not included in the IFR benefit-cost analysis, but are added to the compliance cost for the final rule.
Total	183.4	130.7	

VII. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

This rulemaking constitutes a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866. For purposes of this analysis, we deem the rulemaking to consist of the IFR as modified by this Final Rule.

(1) This rulemaking will have an annual effect of \$100 million or more on the economy. The following discussion summarizes a Regulatory Impact Analysis (RIA) that is available on www.Regulations.gov. Use the keyword/ID “BSEE-2012-0002” to locate the docket for this rule.

BSEE estimates the annual cost of this rulemaking to be approximately \$131 million per year. Because of regulatory changes in this Final Rule and revised cost assumptions, the annual

compliance cost is reduced from \$183 million estimated in the IFR to \$131 million for the final regulatory impact analysis. The quantification of benefits is uncertain, but is estimated to be represented by the avoided costs of a catastrophic spill, which are estimated under the stipulated scenario as being \$16.3 billion per spill avoided and annualized at \$631 million per year.

Based on the occurrence of only a single catastrophic blowout, the number of GOM deepwater wells drilled historically (4,123), and the forecasted future drilling activity in the GOM (160 deepwater wells per year), we estimate the baseline risk of a catastrophic blowout to be about once every 26 years. Combining the baseline likelihood of occurrence with the cost of a representative spill implies that the expected annualized damage cost absent this regulation is \$631 million (\$16.3 billion once in 26 years, equally likely in any 1 year). To balance the \$131

million annual cost imposed by this rulemaking with the expected benefits, the reliability of the well-control system needs to improve by 21 percent (\$131 million/\$631 million). We have found no studies that evaluate the degree of actual improvement that could be expected from dual barriers, negative pressure tests, and a seafloor ROV function test and no additional information was provided during the public comment period. However, based upon the plausible scenarios that have been developed, it is reasonable to conclude that this rulemaking will reduce the risk of a catastrophic blowout spill event such that benefits will justify the costs estimated to be imposed by the regulation.

The purpose of a benefit-cost analysis is to provide policy makers and others with detailed information on the economic consequences of the regulatory requirements. The benefit-cost analysis for this rulemaking was

conducted using a scenario analysis. The benefit-cost analysis considers a regulation designed to reduce the likelihood of a catastrophic oil spill. The costs are the compliance costs of imposed regulation. If another catastrophic oil spill is prevented, the benefits are the avoided costs associated with a catastrophic oil spill (e.g., reduction in expected natural resource damages owing to the reduction in likelihood of failure).

Avoided cost is an approximation of the "true" benefits of avoiding a catastrophic oil spill. A benefits transfer approach is used to estimate the avoided costs. The benefits transfer method estimates economic values by transferring existing benefit calculations from studies already completed for another location or issue to the case at hand. Accordingly, none of the avoided costs used for a hypothetical catastrophic spill rely upon, or should be taken to represent, our estimate for the DWH event.

Three new requirements account for most of the compliance costs imposed by this rulemaking. These are: (1) Use of two independent barriers in each annular flow path; and in the final casing string or liner to prevent hydrocarbon flow in the event of cement failure; (2) Application of negative pressure tests to the production casing string for wells drilled with a subsea BOP; and (3) Testing time for the ROV to close BOP rams after the BOP has been installed on the sea floor. BSEE estimates that these three requirements will impose compliance costs of approximately \$118 million per year, representing 91 percent of the total annual compliance costs of \$131 million associated with this rulemaking. These cost estimates were developed based on public data sources, BSEE experience, and confidential information provided by several offshore operators and drilling companies. The \$131 million estimated annual compliance costs are 29 percent less than the \$183 million cost estimated previously for the IFR, largely reflecting a reduced estimate of the time it takes to conduct an ROV function test when the BOP is on the seafloor and lower negative pressure test costs resulting from relaxed testing requirements in the IFR. These reduced costs are partly offset by the requirement that a dual float valve no longer meets the criteria for a mechanical barrier and inclusion of paperwork costs omitted from the estimates in the IFR. See table 4 earlier in this preamble comparing the IFR estimated compliance costs with those estimated in this Final Rule.

On the benefit side, the avoided costs for a representative deepwater blowout resulting in a catastrophic oil spill are estimated to be about \$16.3 billion (in 2010 dollars). Most of this amount derives from cleanup and restoration estimates developed by the Department of the Interior, Office of Policy Analysis, using damage costs per barrel measures found in historical spill data (from all sources including pipeline, tanker, and shallow water, as well as from deepwater wells) and from aggregate damage measures contained in the legal settlement documents for past spills applied to a catastrophic deepwater spill of hypothetical size. The rest of this avoided cost amount represents the private costs for blowout containment operations. In sum, three components account for nearly the entire avoided spill cost total: (1) Natural resource damage to habitat and creatures; (2) Infrastructure salvage and cleanup operations of areas soiled by oil; and (3) Containment and well-plugging actions, plus lost hydrocarbons.

We believe the compliance cost estimate of \$131 million is closer to the actual cost than the figure used in the IFR because of improved information gathered since deepwater drilling resumed in the GOM in the spring of 2011. On the benefit side, the total avoided cost estimate of \$16.3 billion (representing a measure of expected benefits for avoiding a future catastrophic oil spill) has not been revised. The true magnitude of an avoided spill is highly uncertain because of the limited historical data upon which to judge the cost of failure, the disparity between the damages associated with spills of different sizes, locations, and season of occurrence, and owing to the fact that the measure employed reflects only those outlays that we have been able to calculate based primarily upon factors derived from past oil spills. Possible losses from human health effects or reduced property values have not been quantified in this analysis. Moreover, the likelihood of a future blowout leading to a catastrophic oil spill is difficult to quantify because of limited historical data on catastrophic offshore blowouts.

(2) This final rule will not adversely affect competition or State, local, or tribal governments or communities.

(3) This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(4) This final rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(5) This final rule will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. This final rule has been developed in a manner consistent with these requirements.

Regulatory Flexibility Act: Final Regulatory Flexibility Analysis

BSEE has prepared a Final Regulatory Flexibility Analysis (FRFA) in conjunction with this Final Rule. The FRFA is found in Appendix A of the Regulatory Impact Analysis (RIA). As with the analysis under E.O. 12866, the FRFA analyzes the rulemaking, consisting of the IFR as modified by this Final Rule. The Bureau's publication of the IFR did not include a full Initial Regulatory Flexibility Analysis (IRFA) pursuant to the Regulatory Flexibility Act (5 U.S.C. 603). A supplemental IRFA was published on December 23, 2010 (75 FR 80717) with a 30-day comment period which closed on January 24, 2011. The changes from the IRFA are minor and relate to lower total compliance cost estimates for the regulation. The revised cost estimates are the result of changes to the regulatory language from the IFR to this Final Rule and improved estimates of the costs and the operational timeframes required to comply with the regulatory provisions.

This final rule affects lessees, operators of leases, and drilling contractors on the OCS; thus this rule directly impacts small entities. This could include about 130 active Federal oil and gas lessees and more than a dozen drilling contractors and their suppliers. Small entities that operate under this rule are coded under the Small Business Administration's North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells.

For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, approximately 65 percent of companies operating on the OCS are considered small companies. Therefore, BSEE has determined that this rulemaking will have an impact on a substantial number of small entities.

We estimate that the rulemaking will impose a recurring operational cost of \$131 million each year on operators drilling OCS wells. The rulemaking affects every new well drilled after October 14, 2010; some requirements also apply to wells undergoing completion, workover, or abandonment operations on the OCS. Every operator, both large and small, must meet the same criteria for these operations regardless of company size. However, the overwhelming share of the cost imposed by the rulemaking will fall on the operating companies drilling deepwater wells, which are predominately the larger companies. We estimate that about 81 percent of the total costs will be imposed on deepwater lessees and operators where small businesses only hold 8 percent of the leases and drill 12 percent of the wells. About 19 percent of the total costs will apply to shallow water leases where small companies hold 45 percent of OCS leases and also drill 45 percent of the wells.

Nonetheless, small companies, as both operators and lease-holders, will bear meaningful costs under the rulemaking. Of the annual \$131 million in annual cost imposed by the rulemaking, we estimate that \$12.7 million will apply to small businesses operating in deepwater and \$11.2 million to those operating in shallow water. In total, we estimate that \$23.9 million or 18 percent of the rulemaking's cost will be borne by small businesses.

Alternatives to ease impacts on small business were considered and are discussed in the FRFA. The alternatives considered include: different compliance requirements for small entities, alternative BOP testing requirements and periods, performance rather than design standards, and exemption from regulatory requirements. These alternatives are being rejected by BSEE for this rulemaking because of the overriding need to reduce the chance of a catastrophic blowout event. It would not be responsible for a regulator to compromise the safety of offshore personnel and the environment for any entity, including small businesses. Offshore drilling is highly technical and can be hazardous; any delay may

increase the interim risk of OCS drilling operations.

Small Business Regulatory Enforcement Fairness Act

This final rule is a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). As with the preceding analyses, this discussion deems the rulemaking to consist of the IFR as modified by this Final Rule. This rulemaking:

(a) Will have an annual effect on the economy of \$100 million or more. This rulemaking will affect every new well on the OCS, and every operator, both large and small must meet the same criteria for well construction regardless of company size. This rulemaking may have a significant economic effect on a substantial number of small entities, as discussed in the FRFA. While large companies will bear the majority of these costs, small companies as both leaseholders and contractors supporting OCS drilling operations will be affected.

Considering the new requirements for redundant barriers and new tests, we estimate that this rulemaking will add an average of about \$850 thousand to each new deepwater well drilled and completed with a MODU, \$230 thousand for each new deepwater well drilled with a platform rig, and \$130 thousand for each new shallow water well. While not an insignificant amount, we note this extra recurring cost is around 1 percent for most deep and shallow water wells.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The impact on domestic deepwater hydrocarbon production as a result of these regulations is expected to be marginally negative, but the size of the impact is not expected to materially impact world oil markets. The deepwater GOM is an oil province and the domestic crude oil prices are set by the world oil markets. Currently, domestic onshore production is increasing and there is sufficient spare capacity in OPEC to offset any GOM deepwater production decline that could occur as a result of this rulemaking. Therefore, the increase in the price of hydrocarbon products to consumers from the increased cost to drill and operate on the OCS is expected to be minimal.

(c) Will not have significant adverse effects on competition, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements will apply to all entities operating on the OCS.

(d) May have adverse effects on employment, investment, and productivity. A meaningful increase in costs as a result of more stringent regulations and increased drilling costs may result in a reduction in the pace of deepwater drilling activity on marginal offshore fields, and reduce investment in our offshore domestic energy resources from what it otherwise will be, thereby reducing employment in OCS and related support industries. The additional regulatory requirements in this rulemaking will increase drilling costs and add to the time it takes to drill deepwater wells. The resulting reduction in profitability of drilling operations may cause some declines in related investment and employment. A typical deepwater well drilled by a MODU may cost \$90–\$100 million. The added cost of this rulemaking for offshore wells is expected to yield about a 1 percent decrease in productivity.

(e) Does not make accommodations for small business. Not making such accommodations avoids the risk of compromising the safety and environmental protections addressed in this rulemaking. Small businesses actively invest in offshore operations, owning a 12 percent interest in deepwater leases, most often as a minority partner, and 45 percent of shallow water leases. This rulemaking will make it more expensive for all interest holders in OCS leases, and we do not expect a disproportionate impact on small businesses. However, the costs in this rulemaking may contribute to one or more of the following:

(1) Reduce the small business ownership share in individual deepwater leases.
 (2) Cause small businesses to target their investments more in shallow water leases.
 (3) Cause small businesses to target their investments more in onshore oil and gas operations or other natural resources.

(4) Small businesses may choose to invest or partner in overseas natural resource operations.

(f) May affect small businesses that support offshore oil and gas drilling operations including service, supply, and consulting companies. Because there may be a marginal decrease in offshore drilling activity due to the increased cost and regulatory burden, some businesses that support drilling operations may experience reduced business activity. Some small business may therefore decide to focus more on shallow water or other oil and gas offshore provinces overseas.

(g) May benefit some small businesses. Companies that are involved

with inspecting and certifying equipment covered by this rulemaking, as well as consulting companies specializing in safety and offshore drilling, could see long-term growth.

Unfunded Mandates Reform Act of 1995

This Final Rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The Final Rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this rulemaking does not have significant takings implications. The Final Rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this final rule does not have federalism implications. This rulemaking will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rulemaking will not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rulemaking complies with the requirements of E.O. 12988. Specifically, this rulemaking:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this rulemaking and determined that it has no substantial effects on Federally recognized Indian tribes.

Paperwork Reduction Act (PRA)

This Final Rule contains a collection of information that was submitted to and approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule expands

existing and adds new regulatory requirements under in 30 CFR 250, subparts D, E, F, and Q based on comments received from the IFR (75 FR 63346). The OMB approved these requirements and assigned OMB Control Number 1014-0020, 5,347 hours (expiration August 31, 2015). The title of the collection of information for this Final Rule is 30 CFR 250, *Increased Safety Measures for Energy Development on the Outer Continental Shelf*.

Respondents primarily are the Federal OCS lessees and operators. The frequency of response varies depending upon the requirement. Responses to this collection of information are mandatory. BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552), its implementing regulations (43 CFR 2), 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection*, and 30 CFR part 252, *OCS Oil and Gas Information Program*.

As discussed earlier in the preamble, this final rulemaking is a revision to various sections of the 30 CFR 250 regulations that will amend drilling regulations in subparts D, E, F, and Q. This includes requirements that will implement various safety measures that pertain to drilling, well-completion, well-workovers, and abandoning/decommissioning operations. The information collected will ensure sufficient redundancy in the BOPs; promote the integrity of the well and enhance well-control; and facilitate a culture of safety through operational and personnel management. This Final Rule will promote human safety and environmental protection.

Based on comments received from the IFR (1010-AD68), this rulemaking adds new regulatory requirements and/or expands requirements to those already approved under 30 CFR 250, subparts D, E, F, and Q, as explained in the following paragraphs.

A commenter stated that, where applicable, requirements for drilling, well work-overs, completions, abandonment and/or decommissioning should be consistent. We agreed with the comment, and to be consistent, added new requirements and expanded others in subparts D, E, F, and Q.

For example, in § 250.449(j), when operators submit their test procedures for approval, they must now include how they will test each ROV. We consider the currently approved burden for this requirement to be adequate to include this expanded new information collection (IC) because an operator doing due diligence will have already addressed this requirement in

developing its test procedures; the burden will be to submit the procedures to BSEE.

Also, as a logical outgrowth of the IFR and to respond to the comment to make the BOP requirements consistent across various subparts of the BSEE regulations, we added the BOP requirements to subpart Q.

Please note that between the IFR and the Final Rule, as discussed previously, the BSEE was created. Upon creation of the new agency, the OMB-approved collections of information that related to BSEE were transferred from the 1010 to the 1014 numbering system. Also the collection of information pertaining to 30 CFR 250, subpart D, came up for OMB renewal. As per the PRA process, we revised the estimated burdens, per consultations with industry, which included the new requirements of the IFR. Therefore, the subpart D collection that was submitted to, and approved by, OMB included the hour burdens that pertained to the IFR. Accordingly, this analysis *only* addresses the IC burden of the new and/or expanded regulatory requirements imposed by this final rule.

The current regulations on Oil and Gas Drilling Operations and associated IC are located in 30 CFR 250, subpart D. The OMB approved the IC burden of the current subpart D regulations under control number 1014-0018 (expiration 10/31/2014). This Final Rule adds additional regulatory requirements that pertain to subsea and surface BOPs, well casing and cementing, secondary intervention, unplanned disconnects, recordkeeping, well-completion, and well plugging (+363 burden hours).

The current regulations on Oil and Gas Well-Completion Operations and associated IC are located in 30 CFR 250, subpart E. The OMB approved the IC burden of the current subpart E regulations under control number 1014-0004 (expiration 1/31/2014). This Final Rule adds new regulatory requirements to this subpart that pertain to subsea and surface BOPs, secondary intervention, and well-completions (+311 burden hours).

The current regulations on Oil and Gas Well-Workover Operations and associated IC are located in 30 CFR 250, subpart F. The OMB approved the IC burden of the current subpart F regulations under control number 1014-0001 (expiration 1/31/2014). This Final Rule adds new regulatory requirements to this subpart that pertain to subsea and surface BOPs, secondary intervention, unplanned disconnects, and well-workers (+776 burden hours).

The current regulations on Decommissioning Activities and associated IC are located in 30 CFR 250,

subpart Q. The OMB approved the IC burden of the current subpart Q regulations under control number 1014-0010 (expiration 12/31/2013). This Final Rule adds new regulatory requirements that refer to information collection requirements that pertain to subsea and surface BOPs, secondary intervention, unplanned disconnects and well workers during the abandonment decommissioning process (+3,897 burden hours).

We note that while Form BSEE-0124, Application for Permit to Modify is housed in 30 CFR 250, subpart D (1014-0018), this form is used in multiple subparts for multiple purposes. The form is also used in 30 CFR 250, subparts E, F, P, and Q—Well- Completions, Well-Workovers, Sulphur Operations, and for Abandonment/ Decommissioning functions. While the requirement may be stated as ‘submit with your APM’, the paperwork burden to fill out the form is in subpart D, while

the actual APM submittal of supplementary and supporting documents and/or information that pertains to the job function is in the specific subpart.

When this rule becomes effective, BSEE will incorporate the 30 CFR 250, subparts D, E, F, and Q paperwork burdens into their respective primary collections: 1014-0018, 1014-0004, 1014-0001, and 1014-0010 respectively.

The following table provides a breakdown of the new burdens.

BURDEN TABLE

Citation 30 CFR 250	Reporting & recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours (rounded)
Subpart D				
410-418; 420(a)(6); 423(b)(3), (c)(3); 449(j), (k)(1); 456(j) plus various references in subparts A, B, D, E, H, P, Q.	Apply for permit to drill APD (Form BSEE-0123) that includes any/all supporting documentation/evidence [including, but not limited to, test results, calculations, pressure integrity, verifications, procedures, criteria, qualifications, etc.] and requests for various approvals required in subpart D (including §§ 250.424, 425, 427, 428, 432, 442(c), 447, 448(c), 451(g), 456(a)(3), (f), 460, 490(c)) and submitted via the form; upon request, make available to BSEE.	Burden covered under 1014-0018		0
449(j); 460; 465; 514(d); 515; 517(d)(8-9); 614(d); 615; 617(h)(1-2); 1704(g); 1707(d), (h)(1-2); 1709; 1712; 1721(h).	Provide revised plans and the additional supporting information required by the cited regulations [test results, calculations, verifications, procedures, criteria, qualifications, etc.] when you submit an Application for Permit to Modify (APM) (Form BSEE-0124) to BSEE for approval.	Burden covered under 1014-0018		0
416(g)(2)	Provide 72 hour advance notice of location of shearing ram tests or inspections; allow BSEE access to witness testing, inspections and information verification.	Burden covered under 1014-0018		0
416(g)(2)	Submit evidence that demonstrates that the Registered Professional Engineer/firm has the expertise and experience necessary to perform the verification(s); allow BSEE access to witness testing; verify info submitted to BSEE.	0.25	700 submittals	175
420(b)(3)	Submit documentation of two independent barriers after installation with your EOR.	Burden covered under 1014-0018		0
420(b)(3)	Request approval for alternative options to installing barriers	0.25	25 requests	7
423(a)	Request alternative approval for other pressure casing test pressures	Burden covered under 1010-0114		0
423(a)	Request and receive approval from BSEE District Manager for repair	0.5	88 requests	44
423(b)(3), (c)(4)	Document pressure casing test results and make available to BSEE upon request.	Burden covered under 1014-0018		0
423(c)(5)	Immediately contact BSEE District Manager when problem corrected due to failed negative pressure test; submit a description of corrected action taken; and receive approval from BSEE District Manager to retest.	1	14 notifications	14
423(c)(8)	Submit documentation of successful negative pressure test in the EOR (Form BSEE-0125).	2	45 submittals	90
442(f)(3)	Demonstrate that your secondary control system will function properly	5	1 validation	5
446(a)	Document BOP maintenance and inspection procedures used; record results of BOP inspections and maintenance actions; maintain records for 2 years or longer if directed by BSEE; make available to BSEE upon request.	Burden covered under 1014-0018		0
449(j)(2)	Notify BSEE District Manager at least 72 hours prior to stump/initial test on seafloor.	0.25	110 notifications	28
449(j)(3) *	Document all ROV intervention function test results including how you test each ROV functions; make available to BSEE upon request.	Burden covered under 1014-0018		0
456(j)	Request approval from the BSEE District Manager to displace kill-weight fluids to an underbalanced state; submit detailed written procedures with your APD/APM.	Burden covered under 1014-0018		0
Subtotal D			983 responses	363

BURDEN TABLE—Continued

Citation 30 CFR 250	Reporting & recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours (rounded)
Subpart E				
514(d)	Request approval from the BSEE District Manager to displace kill-weight fluids to an underbalanced state; submit detailed written procedures with your APM.	2	60 requests	120
515	Submit a description of your BOP and its components; schematic drawings; independent third-party verification and all supporting information (evidence showing appropriate licenses, has expertise/experience necessary to perform required verifications, etc) with your APM.	15	12 submittals	180
515(e)(2)(ii)	Allow BSEE access to witness testing, inspections, and information verification. Notify BSEE District Manager at least 72 hours prior to shearing ram tests.	0.25	12 notifications	3
517(d)(8)*	Function test ROV interventions on your subsea BOP stack; document all test results, including how you test each ROV function; submit procedures with your APM for BSEE District Manager approval; make available to BSEE upon request.	Burden covered under 1014–0004		0
517(d)(8)(ii)	Notify BSEE District Manager at least 72 hours prior to stump/initial test on seafloor.	0.25	32 notifications	8
517(d)(9)	Document all autoshear and deadman test results and submit test procedures with your APM for BSEE Manager approval; make available to BSEE upon request.	Burden covered under 1014–0004		0
517(g)(l)	Document BOP inspection procedures used; record results of BOP inspection actions; maintain records for 2 years or longer if directed by BSEE; make available to BSEE upon request.	Burden covered under 1014–0004		0
517(g)(2)	Request alternative method/frequency to inspect a marine riser	Burden covered under 1010–0114		0
517(h)	Document the procedures used for BOP maintenance/quality management; record results; maintain records for 2 years or longer if directed by BSEE; make available to BSEE upon request.	Burden covered under 1014–0004		0
Subtotal E			116 responses	311
Subpart F				
614(d)	Request approval from the BSEE District Manager to displace kill-weight fluids to an underbalanced state; submit detailed written procedures with your APM.	2	80 requests	160
615	Submit a description of your BOP and its components; schematic drawings; independent third-party verification and all supporting information (evidence showing appropriate licenses, has expertise/experience necessary to perform required verifications, etc) with your APM.	15	40 submittals	600
615(e)(2)(ii)	Allow BSEE access to witness testing, inspections, and information verification. Notify BSEE District Manager at least 72 hours prior to shearing ram tests.	0.25	12 notifications	5
617(h)(l) *	Document all test results of your ROV intervention functions including how you test each ROV function; submit test procedures with your APM for BSEE District Manager approval; make available to BSEE upon request.	Burden covered under 1014–0001		0
617(h)(1)(ii)	Notify BSEE District Manager at least 72 hours prior to stump/initial test on seafloor.	0.25	44 notifications	11
617(h)(2) *	Document all autoshear and deadman test results; submit test procedures with your APM for BSEE District Manager approval; make available to BSEE upon request.	Burden covered under 1014–0001		0
618(a)(l)	Document the procedures used for BOP inspections; record results; maintain records for 2 years or longer if directed by BSEE; make available to BSEE upon request.	Burden covered under 1014–0001		0
618(a)(2)	Request approval to use alternative method to inspect a marine riser	Burden covered under 1010–0114		0
618(b)	Document the procedures used for BOP maintenance; record results; maintain records for 2 years or longer if directed by BSEE; make available to BSEE upon request.	Burden covered under 1014–0001		0
Subtotal F			176 responses	776
Subpart Q				
1705	Submit a description of your BOP and its components; schematic drawings; independent third-party verification and all supporting information (evidence showing appropriate licenses, has expertise/experience necessary to perform required verifications, etc) with your APM.	15	200 submittals	3,000
1705(e)(2)(ii)	Allow BSEE access to witness testing, inspections, and information verification. Notify BSEE District Manager at least 72 hours prior to shearing ram tests.	0.25	12 submittals	3

BURDEN TABLE—Continued

Citation 30 CFR 250	Reporting & recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours (rounded)
1706(a)	Request approval of well abandonment operations; procedures indicating how the annular preventer will be utilized and how pressure limitations will be applied during each mode of pressure control, with your APM.	0.25	200 requests	50
1706(f)(4)	Request approval of the BSEE District Manager to conduct operations without downhole check values; describe procedures/equipment in APM.	1	50 requests	50
1707(a)(2)	Request approval from BSEE District Manager to test annular BOP less than 70 percent.	0.25	6 requests	2
1707(b)(2)	State reason for postponing test in operations logs	0.25	30 reasons	8
1707(b)(2)	Request approval from BSEE District Manager for alternate test frequencies if condition/BOP warrant.	0.25	5 requests	2
1707(f)	Request alternative method to record test pressures	0.25	25 requests	7
1707(f)	Record test pressures during BOP and coiled tubing on a pressure chart or w/digital recorder; certify charts are correct.	1	200 records/ certifications	200
1707(g)	Record or reference in operations log all pertinent information listed in this requirement; make all documents pertaining to BOP tests, actuations and inspections available for BSEE review at facility for duration of well abandonment activity; retain all records for 2 years at a location conveniently available for the BSEE District Manager.	0.5	200 records	100
1707(h)(1)	Submit test procedures with your APM for BSEE District Manager approval.	1	50 submittals	50
1707(h)(1)(ii)	Document all ROV intervention test results; make available to BSEE upon request.	0.5	50 records	25
1707(h)(2)(ii)	Document all autoshear and deadman function test results; make available to BSEE upon request.	0.25	50 records	13
1708(a), (b)	Document BOP inspection and maintenance procedures used; record results of BOP inspections and maintenance actions; maintain records for 2 years or longer if directed by BSEE; make available to BSEE upon request.	1	25 records	25
1708(a)	Request alternative method to inspect marine risers	0.25	5 requests	2
1709	Request approval from the BSEE District Manager to displace kill-weight fluids in an unbalanced state; submit detailed written procedures with your APM.	2	80 requests	160
1712(g); 1721(h)	Submit with your APM, Registered Professional Engineer certification	Burden covered under 1014-0018		0
1712(g)*; 1721(h)*	Submit evidence from the Registered Professional Engineer/firm of the well abandonment design and procedures; plugs in the annuli meet requirements of §250.1715; 2 independent barriers etc; has the expertise and experience necessary to perform the verification(s), submit with the APM.	1	200	200
Total Q			1,388 responses	3,897
Grand Total			2,663 Responses	5,347

An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may comment, at any time, on the accuracy of the IC burden in this rule and may submit any comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations Development Branch; Mail Stop HE-3314; 381 Elden Street; Herndon, Virginia 20170-4817.

National Environmental Policy Act of 1969

We have prepared a supplemental environmental assessment to determine whether this rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. This

rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because we reached a Finding of No Significant Impact (FONSI). A copy of the FONSI and Supplemental Environmental Assessment can be viewed at www.Regulations.gov (use the keyword/ID "BSEE-2012-0002").

Data Quality Act

In developing this rulemaking, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, app. C § 515, 114 Stat. 2763, 2763A-153-154).

Effects on the Energy Supply (E.O. 13211)

This rulemaking is a significant rule and is subject to review by the Office of Management and Budget under E.O. 12866. This rulemaking does have an effect on energy supply, distribution, or use because its provisions may delay development of some OCS oil and gas resources. The delay stems from the extra drill time and cost imposed on new wells which will marginally slow exploration and development operations. We estimate an average delay of 1 day and cost of \$820 thousand for most deepwater wells in the GOM.

Increased imports or inventory drawdowns should compensate for most of the delay or reduction in domestic production. The recurring costs

imposed on new drilling by this rulemaking are very small (1 percent) relative to the cost of drilling an OCS well. In view of the high risk-reward associated with deepwater exploration in general, we do not expect this small regulatory surcharge from this rulemaking to result in meaningful reduction in discoveries. Thus, we expect the net change in supply associated with this rulemaking will cause only a very slight increase in oil and gas prices relative to what they otherwise would have been. Normal volatility in both oil and gas market prices overshadow these rule-related price effects, so we consider this an insignificant effect on energy supply and price.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Incorporation by reference, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

Dated: August 9, 2012.
Ned Farquhar,
Deputy Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Bureau of Safety and Environmental Enforcement (BSEE) is amending 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 2. In part 250, revise all references to “glory hole” to read “well cellar”.

■ 3. Amend § 250.125(a), by revising entries (8) and (9) in the table to read as follows:

§ 250.125 Service fees.

(a) * * *

Service—processing of the following	Fee amount	30 CFR citation
(8) Application for Permit to Drill (APD; Form BSEE-0123).	\$1,959 for initial applications only; no fee for revisions.	§ 250.410(d); § 250.513(b); § 250.1617(a).
(9) Application for Permit to Modify (APM; Form BSEE-0124).	\$116	§ 250.465(b); § 250.513(b); § 250.613(b); § 250.1618(a); § 250.1704(g).

■ 4. Amend § 250.198 by revising paragraphs (a)(3), (h)(63), and (h)(78) to read as follows:

§ 250.198 Documents incorporated by reference.

(a) * * *

(3) The effect of incorporation by reference of a document into the regulations in this part is that the incorporated document is a requirement. When a section in this part incorporates all of a document, you are responsible for complying with the provisions of that entire document, except to the extent that the section which incorporates the document by reference provides otherwise. When a section in this part incorporates part of a document, you are responsible for complying with that part of the document as provided in that section.

(h) * * *

(63) API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells, Third Edition, March 1997; reaffirmed September 2004; incorporated by reference at §§ 250.442, 250.446, 250.517, 250.618, and 250.1708.

(78) API Standard 65—Part 2, Isolating Potential Flow Zones During Well Construction; Second Edition,

December 2010; incorporated by reference at § 250.415(f).

■ 5. Amend § 250.415 by revising paragraphs (f) to read as follows:

§ 250.415 What must my casing and cementing programs include?

(f) A written description of how you evaluated the best practices included in API Standard 65—Part 2, Isolating Potential Flow Zones During Well Construction, Second Edition (as incorporated by reference in § 250.198). Your written description must identify the mechanical barriers and cementing practices you will use for each casing string (reference API Standard 65—Part 2, Sections 4 and 5).

■ 6. Amend § 250.416 by revising paragraphs (e), (f), and (g) to read as follows:

§ 250.416 What must I include in the diverter and BOP descriptions?

(e) Independent third-party verification and supporting documentation that show the blind-shear rams installed in the BOP stack are capable of shearing any drill pipe (including workstring and tubing) in the hole under maximum anticipated surface pressure. The documentation must include actual shearing and subsequent pressure integrity test

results for the most rigid pipe to be used and calculations of shearing capacity of all pipe to be used in the well, including correction for MASP;

(f) When you use a subsea BOP stack or surface BOP stack on a floating facility, independent third-party verification that shows:

(1) The BOP stack is designed for the specific equipment on the rig and for the specific well design;

(2) The BOP stack has not been compromised or damaged from previous service;

(3) The BOP stack will operate in the conditions in which it will be used; and

(g) The qualifications of the independent third-party referenced in paragraphs (e) and (f) of this section:

(1) The independent third-party in this section must be a technical classification society, or a licensed professional engineering firm, or a registered professional engineer capable of providing the verifications required under this part.

(2) You must:

(i) Include evidence that the registered professional engineer, or a technical classification society, or engineering firm you are using or its employees hold appropriate licenses to perform the verification in the appropriate jurisdiction, and evidence to demonstrate that the individual, society, or firm has the expertise and experience necessary to perform the required verifications.

(ii) Ensure that an official representative of BSEE will have access to the location to witness any testing or inspections, and verify information submitted to BSEE. Prior to any shearing ram tests or inspections, you must notify the BSEE District Manager at least 72 hours in advance.

■ 7. Amend § 250.418 by revising paragraphs (g) and (i) to read as follows:

§ 250.418 What additional information must I submit with my APD?

* * * * *

(g) A request for approval if you plan to wash out below the mudline or displace some cement to facilitate casing removal upon well abandonment;

* * * * *

(i) Descriptions of qualifications required by § 250.416(g) of the independent third-party; and

* * * * *

■ 8. Amend § 250.420 by revising paragraphs (a)(6) and (b)(3) to read as follows:

§ 250.420 What well casing and cementing requirements must I meet?

* * * * *

(a) * * *

(6)(i) Include a certification signed by a registered professional engineer that the casing and cementing design is appropriate for the purpose for which it is intended under expected wellbore conditions, and is sufficient to satisfy the tests and requirements of this section and § 250.423. Submit this certification with your APD (Form BSEE-0123).

(ii) You must have the registered professional engineer involved in the casing and cementing design process.

(iii) The registered professional engineer must be registered in a state of the United States and have sufficient expertise and experience to perform the certification.

(b) * * *

(3) On all wells that use subsea BOP stacks, you must include two independent barriers, including one mechanical barrier, in each annular flow path (examples of barriers include, but are not limited to, primary cement job and seal assembly). For the final casing string (or liner if it is your final string), you must install one mechanical barrier in addition to cement to prevent flow in the event of a failure in the cement. A

dual float valve, by itself, is not considered a mechanical barrier. These barriers cannot be modified prior to or during completion or abandonment operations. The BSEE District Manager may approve alternative options under § 250.141. You must submit documentation of this installation to BSEE in the End-of-Operations Report (Form BSEE-0125).

* * * * *

■ 9. Revise § 250.423 to read as follows:

§ 250.423 What are the requirements for pressure testing casing?

(a) The table in this section describes the minimum test pressures for each string of casing. You may not resume drilling or other down-hole operations until you obtain a satisfactory pressure test. If the pressure declines more than 10 percent in a 30-minute test, or if there is another indication of a leak, you must investigate the cause and receive approval from the appropriate BSEE District Manager for the repair to resolve the problem ensuring that the casing will provide a proper seal. The BSEE District Manager may approve or require other casing test pressures.

Casing type	Minimum test pressure
(1) Drive or Structural	Not required. 200 psi. 70 percent of its minimum internal yield.
(2) Conductor	
(3) Surface, Intermediate, and Production.	

(b) You must ensure proper installation of casing in the subsea wellhead or liner in the liner hanger.

(1) You must ensure that the latching mechanisms or lock down mechanisms are engaged upon installation of each casing string.

(2) If you run a liner that has a latching mechanism or lock down mechanism, you must ensure that the latching mechanisms or lock down mechanisms are engaged upon installation of the liner.

(3) You must perform a pressure test on the casing seal assembly to ensure proper installation of casing or liner. You must perform this test for the intermediate and production casing strings or liner.

(i) You must submit for approval with your APD, test procedures and criteria for a successful test.

(ii) You must document all your test results and make them available to BSEE upon request.

(c) You must perform a negative pressure test on all wells that use a subsea BOP stack or wells with mudline suspension systems. The BSEE District Manager may require you to perform additional negative pressure tests on other casing strings or liners (e.g., intermediate casing string or liner) or on wells with a surface BOP stack.

(1) You must perform a negative pressure test on your final casing string or liner.

(2) You must perform a negative test prior to unlatching the BOP at any point in the well. The negative test must be performed on those components, at a minimum, that will be exposed to the negative differential pressure that will occur when the BOP is disconnected.

(3) You must submit for approval with your APD, test procedures and criteria for a successful test. If any of your test procedures or criteria for a successful test change, you must submit for approval the changes in a revised APD or APM.

(4) You must document all your test results and make them available to BSEE upon request.

(5) If you have any indication of a failed negative pressure test, such as, but not limited to pressure buildup or observed flow, you must immediately investigate the cause. If your investigation confirms that a failure occurred during the negative pressure test, you must:

(i) Correct the problem and immediately contact the appropriate BSEE District Manager.

(ii) Submit a description of the corrective action taken and you must receive approval from the appropriate BSEE District Manager for the retest.

(6) You must have two barriers in place, as required in § 250.420(b)(3), prior to performing the negative pressure test.

(7) You must include documentation of the successful negative pressure test in the End-of-Operations Report (Form BSEE-0125).

■ 10. Amend § 250.428 by revising paragraph (c) to read as follows:

§ 250.428 What must I do in certain cementing and casing situations?

* * * * *

If you encounter the following situation . . .

Then you must . . .

- | | |
|---|---|
| <p>(c) Have indication of inadequate cement job (such as, but not limited to, lost returns, cement channeling, gas cut mud, or failure of equipment).</p> | <p>(1) Run a temperature survey;
(2) Run a cement evaluation log; or
(3) Use a combination of these techniques.</p> |
|---|---|

If you encounter the following situation . . .

Then you must . . .

■ 11. Amend § 250.442 by removing paragraph (l) and revising paragraphs (a), (e), and (f) to read as follows:

§ 250.442 What are the requirements for a subsea BOP system?

When drilling with a subsea BOP system, you must . . .

Additional requirements . . .

(a) Have at least four remote-controlled, hydraulically operated BOPs ..

You must have at least one annular BOP, two BOPs equipped with pipe rams, and one BOP equipped with blind-shear rams. The blind-shear rams must be capable of shearing any drill pipe (including workstring and tubing) in the hole under maximum anticipated surface pressures.

(e) Maintain an ROV and have a trained ROV crew on each drilling rig on a continuous basis once BOP deployment has been initiated from the rig until recovered to the surface. The crew must examine all ROV related well-control equipment (both surface and subsea) to ensure that it is properly maintained and capable of shutting in the well during emergency operations.

The crew must be trained in the operation of the ROV. The training must include simulator training on stabbing into an ROV intervention panel on a subsea BOP stack.

(f) Provide autoshear and deadman systems for dynamically positioned rigs.

- (1) *Autoshear system* means a safety system that is designed to automatically shut in the wellbore in the event of a disconnect of the LMRP. When the autoshear is armed, a disconnect of the LMRP closes, at a minimum, one set of blind-shear rams. This is considered a “rapid discharge” system.
- (2) *Deadman System* means a safety system that is designed to automatically close, at a minimum, one set of blind-shear rams in the event of a simultaneous absence of hydraulic supply and signal transmission capacity in both subsea control pods. This is considered a “rapid discharge” system.
- (3) You may also have an acoustic system as a secondary control system. If you intend to install an acoustic control system, you must demonstrate to BSEE as part of the information submitted under § 250.416 that the acoustic system will function in the proposed environment and conditions.

■ 12. Amend § 250.443 by revising paragraph (g) to read as follows:

§ 250.443 What associated systems and related equipment must all BOP systems include?

(g) A wellhead assembly with a rated working pressure that exceeds the maximum anticipated wellhead pressure.

■ 13. Amend § 250.446 by revising paragraph (a) to read as follows:

§ 250.446 What are the BOP maintenance and inspection requirements?

(a) You must maintain and inspect your BOP system to ensure that the equipment functions properly. The BOP maintenance and inspections must meet or exceed the provisions of Sections 17.10 and 18.10, Inspections; Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by

reference as specified in § 250.198). You must document how you met or exceeded the provisions of Sections 17.10 and 18.10, Inspections; Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, record the results of your BOP inspections and maintenance actions, and make the records available to BSEE upon request. You must maintain your records on the rig for 2 years from the date the records are created, or for a longer period if directed by BSEE;

■ 14. Amend § 250.449 by revising paragraphs (b), (j), and (k) to read as follows:

§ 250.449 What additional BOP testing requirements must I meet?

(b) Stump test a subsea BOP system before installation. You must use water to conduct this test. You may use drilling fluids to conduct subsequent tests of a subsea BOP system. You must

perform the initial subsea BOP test on the seafloor within 30 days of the stump test.

(j) Test all ROV intervention functions on your subsea BOP stack during the stump test. Each ROV must be fully compatible with the BOP stack ROV intervention panels. You must also test and verify closure of at least one set of rams during the initial test on the seafloor through an ROV hot stab. You must submit test procedures, including how you will test each ROV intervention function, with your APD or APM for BSEE District Manager approval. You must:

- (1) Ensure that the ROV hot stabs are function tested and are capable of actuating, at a minimum, one set of pipe rams, one set of blind-shear rams, and unlatching the Lower Marine Riser Package (LMRP);
- (2) Notify the appropriate BSEE District Manager a minimum of 72 hours prior to the stump test and initial test on the seafloor; and

(3) Document all your test results and make them available to BSEE upon request;

(k) Function test autoshear and deadman systems on your subsea BOP stack during the stump test. You must also test the deadman system and verify closure of at least one set of blind-shear rams during the initial test on the seafloor. When you conduct the initial deadman system test on the seafloor you must ensure the well is secure and, if

hydrocarbons have been present, appropriate barriers are in place to isolate hydrocarbons from the wellhead. You must also have an ROV on bottom during the test.

(1) You must submit test procedures with your APD or APM for District Manager approval. The procedures for these function tests must include documentation of the controls and circuitry of the system utilized during each test. The procedure must also

describe how the ROV will be utilized during this operation.

(2) You must document all your test results and make them available to BSEE upon request.

■ 15. Amend § 250.451 by adding paragraph (j) to read as follows:

§ 250.451 What must I do in certain situations involving BOP equipment or systems?

* * * * *

If you encounter the following situation . . .	Then you must . . .
* * * * *	* * * * *
(j) Need to remove the BOP stack	Have a minimum of two barriers in place prior to BOP removal. The BSEE District Manager may require additional barriers.

■ 16. Amend § 250.456 by revising paragraph (j) to read as follows:

§ 250.456 What safe practices must the drilling fluid program follow?

* * * * *

(j) Before you displace kill-weight fluid from the wellbore and/or riser to an underbalanced state, you must obtain approval from the BSEE District Manager. To obtain approval, you must submit with your APD or APM your reasons for displacing the kill-weight fluid and provide detailed step-by-step written procedures describing how you will safely displace these fluids. The step-by-step displacement procedures must address the following:

(1) Number and type of independent barriers, as described in § 250.420(b)(3), that are in place for each flow path that requires such barriers,

(2) Tests you will conduct to ensure integrity of independent barriers,

(3) BOP procedures you will use while displacing kill-weight fluids, and

(4) Procedures you will use to monitor the volumes and rates of fluids entering and leaving the wellbore; and

* * * * *

■ 17. Amend § 250.513 by:

■ a. Redesignating paragraphs (b)(4) through (b)(5) as (b)(5) through (b)(6), and

■ b. Adding a new paragraph (b)(4) to read as follows:

§ 250.513 Approval and reporting of well-completion operations.

* * * * *

(b) * * *

(4) All applicable information required in § 250.515.

* * * * *

■ 18. Amend § 250.514 by adding paragraph (d) to read as follows:

§ 250.514 Well-control fluids, equipment, and operations.

* * * * *

(d) Before you displace kill-weight fluid from the wellbore and/or riser to an underbalanced state, you must obtain approval from the BSEE District Manager. To obtain approval, you must submit with your APM your reasons for displacing the kill-weight fluid and provide detailed step-by-step written procedures describing how you will safely displace these fluids. The step-by-step displacement procedures must address the following:

(1) Number and type of independent barriers, as described in § 250.420(b)(3), that are in place for each flow path that requires such barriers,

(2) Tests you will conduct to ensure integrity of independent barriers,

(3) BOP procedures you will use while displacing kill-weight fluids, and

(4) Procedures you will use to monitor the volumes and rates of fluids entering and leaving the wellbore.

■ 19. Redesignate §§ 250.515 through 250.530 as §§ 250.516 through 250.531.

■ 20. Add new § 250.515 to read as follows:

§ 250.515 What BOP information must I submit?

For completion operations, your APM must include the following BOP descriptions:

(a) A description of the BOP system and system components, including pressure ratings of BOP equipment and proposed BOP test pressures;

(b) A schematic drawing of the BOP system that shows the inside diameter of the BOP stack, number and type of preventers, all control systems and pods, location of choke and kill lines, and associated valves;

(c) Independent third-party verification and supporting

documentation that show the blind-shear rams installed in the BOP stack are capable of shearing any drill pipe (including workstring and tubing) in the hole under maximum anticipated surface pressure. The documentation must include actual shearing and subsequent pressure integrity test results for the most rigid pipe to be used, and calculations of shearing capacity of all pipe to be used in the well including correction for maximum anticipated surface pressure;

(d) When you use a subsea BOP stack, independent third-party verification that shows:

(1) The BOP stack is designed for the specific equipment on the rig and for the specific well design;

(2) The BOP stack has not been compromised or damaged from previous service;

(3) The BOP stack will operate in the conditions in which it will be used; and

(e) The qualifications of the independent third-party referenced in paragraphs (c) and (d) of this section:

(1) The independent third-party in this section must be a technical classification society, or a licensed professional engineering firm, or a registered professional engineer capable of providing the verifications required under this part.

(2) You must:

(i) Include evidence that the registered professional engineer, or a technical classification society, or engineering firm you are using or its employees hold appropriate licenses to perform the verification in the appropriate jurisdiction, and evidence to demonstrate that the individual, society, or firm has the expertise and experience necessary to perform the required verifications; and

(ii) Ensure that an official representative of BSEE will have access

to the location to witness any testing or inspections, and verify information submitted to BSEE. Prior to any shearing ram tests or inspections, you must notify the BSEE District Manager at least 72 hours in advance.

■ 21. Amend newly redesignated § 250.517 by revising paragraphs (d)(2), (d)(8), (d)(9), (g), and (h) to read as follows:

§ 250.517 Blowout preventer system tests, inspections, and maintenance.

* * * * *

(d) * * *

(2) Stump test a subsea BOP system before installation. You must use water to conduct this test. You may use drilling or completion fluids to conduct subsequent tests of a subsea BOP system. You must perform the initial subsea BOP test on the seafloor within 30 days of the stump test.

* * * * *

(8) Test all ROV intervention functions on your subsea BOP stack during the stump test. Each ROV must be fully compatible with the BOP stack ROV intervention panels. You must also test and verify closure of at least one set of rams during the initial test on the seafloor through an ROV hot stab. You must submit test procedures, including how you will test each ROV function, with your APM for BSEE District Manager approval. You must:

(i) Ensure that the ROV hot stabs are function tested and are capable of actuating, at a minimum, one set of pipe rams, one set of blind-shear rams, and unlatching the LMRP;

(ii) Notify the appropriate BSEE District Manager a minimum of 72 hours prior to the stump test and initial test on the seafloor;

(iii) Document all your test results and make them available to BSEE upon request; and

(9) Function test autoshear and deadman systems on your subsea BOP stack during the stump test. You must also test the deadman system and verify closure of at least one set of blind-shear rams during the initial test on the seafloor. When you conduct the initial deadman system test on the seafloor you must ensure the well is secure and, if hydrocarbons have been present, appropriate barriers are in place to isolate hydrocarbons from the wellhead. You must also have an ROV on bottom during the test. You must:

(i) Submit test procedures with your APM for BSEE District Manager approval. The procedures for these function tests must include documentation of the controls and circuitry of the system utilized during each test. The procedure must also

describe how the ROV will be utilized during this operation.

(ii) Document all your test results and make them available to BSEE upon request.

* * * * *

(g) *BOP inspections.* (1) You must inspect your BOP system to ensure that the equipment functions properly. The BOP inspections must meet or exceed the provisions of Sections 17.10 and 18.10, Inspections, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You must document how you met or exceeded the provisions of Sections 17.10 and 18.10 described in API RP 53, the procedures used, record the results, and make the records available to BSEE upon request. You must maintain your records on the rig for 2 years from the date the records are created, or for a longer period if directed by BSEE.

(2) You must visually inspect your surface BOP system on a daily basis. You must visually inspect your subsea BOP system and marine riser at least once every 3 days if weather and sea conditions permit. You may use television cameras to inspect subsea equipment. The BSEE District Manager may approve alternate methods and frequencies to inspect a marine riser.

* * * * *

(h) *BOP maintenance.* You must maintain your BOP system to ensure that the equipment functions properly. The BOP maintenance must meet or exceed the provisions of Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You must document how you met or exceeded the provisions of Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, the procedures used, record the results, and make the records available to BSEE upon request. You must maintain your records on the rig for 2 years from the date the records are created, or for a longer period if directed by BSEE.

* * * * *

■ 22. Amend § 250.613 by:

a. Redesignating paragraphs (b)(3) through (b)(4) as (b)(4) through (b)(5), and

b. Adding a new paragraph (b)(3) to read as follows:

§ 250.613 Approval and reporting of well-workover operations.

* * * * *

(b) * * *

(3) All information required in § 250.615.

* * * * *

■ 23. Amend § 250.614 by adding new paragraph (d) to read as follows:

§ 250.614 Well-control fluids, equipment, and operations.

* * * * *

(d) Before you displace kill-weight fluid from the wellbore and/or riser to an underbalanced state, you must obtain approval from the BSEE District Manager. To obtain approval, you must submit with your APM your reasons for displacing the kill-weight fluid and provide detailed step-by-step written procedures describing how you will safely displace these fluids. The step-by-step displacement procedures must address the following:

(1) Number and type of independent barriers, as described in § 250.420(b)(3), that are in place for each flow path that requires such barriers,

(2) Tests you will conduct to ensure integrity of independent barriers,

(3) BOP procedures you will use while displacing kill weight fluids, and

(4) Procedures you will use to monitor the volumes and rates of fluids entering and leaving the wellbore.

■ 24. Redesignate §§ 250.615 through 250.619 as §§ 250.616 through 250.620.

■ 25. Add new § 250.615 to read as follows:

§ 250.615 What BOP information must I submit?

For well-workover operations, your APM must include the following BOP descriptions:

(a) A description of the BOP system and system components, including pressure ratings of BOP equipment and proposed BOP test pressures;

(b) A schematic drawing of the BOP system that shows the inside diameter of the BOP stack, number and type of preventers, all control systems and pods, location of choke and kill lines, and associated valves;

(c) Independent third-party verification and supporting documentation that show the blind-shear rams installed in the BOP stack are capable of shearing any drill pipe (including workstring and tubing) in the hole under maximum anticipated surface pressure. The documentation must include actual shearing and subsequent pressure integrity test results for the most rigid pipe to be used and calculations of shearing capacity of

all pipe to be used in the well, including correction for under maximum anticipated surface pressure;

(d) When you use a subsea BOP stack, independent third-party verification that shows:

(1) The BOP stack is designed for the specific equipment on the rig and for the specific well design;

(2) The BOP stack has not been compromised or damaged from previous service;

(3) The BOP stack will operate in the conditions in which it will be used; and

(e) The qualifications of the independent third-party referenced in paragraphs (c) and (d) of this section:

(1) The independent third-party in this section must be a technical classification society, or a licensed professional engineering firm, or a registered professional engineer capable of providing the verifications required under this part.

(2) You must:

(i) Include evidence that the registered professional engineer, or a technical classification society, or engineering firm you are using or its employees hold appropriate licenses to perform the verification in the appropriate jurisdiction, and evidence to demonstrate that the individual, society, or firm has the expertise and experience necessary to perform the required verifications.

(ii) Ensure that an official representative of BSEE will have access to the location to witness any testing or inspections, and verify information submitted to BSEE. Prior to any shearing ram tests or inspections, you must notify the BSEE District Manager at least 72 hours in advance.

* * * * *

■ 26. Amend newly redesignated § 250.617 by revising paragraph (h) to read as follows:

§ 250.617 Blowout preventer system testing, records, and drills.

* * * * *

(h) Stump test a subsea BOP system before installation. You must use water to conduct this test. You may use drilling or completion fluids to conduct subsequent tests of a subsea BOP system. You must perform the initial subsea BOP test on the seafloor within 30 days of the stump test. You must:

(1) Test all ROV intervention functions on your subsea BOP stack during the stump test. Each ROV must be fully compatible with the BOP stack ROV intervention panels. You must also

test and verify closure of at least one set of rams during the initial test on the seafloor through an ROV hot stab. You must submit test procedures, including how you will test each ROV function, with your APM for BSEE District Manager approval. You must:

(i) Ensure that the ROV hot stabs are function tested and are capable of actuating, at a minimum, one set of pipe rams, one set of blind-shear rams, and unlatching the LMRP;

(ii) Notify the appropriate BSEE District Manager a minimum of 72 hours prior to the stump test and initial test on the seafloor;

(iii) Document all your test results and make them available to BSEE upon request; and

(2) Function test autoshear and deadman systems on your subsea BOP stack during the stump test. You must also test the deadman system and verify closure of at least one set of blind-shear rams during the initial test on the seafloor. When you conduct the initial deadman system test on the seafloor you must ensure the well is secure and, if hydrocarbons have been present, appropriate barriers are in place to isolate hydrocarbons from the wellhead. You must also have an ROV on bottom during the test. You must:

(i) Submit test procedures with your APM for BSEE District Manager approval. The procedures for these function tests must include documentation of the controls and circuitry of the system utilized during each test. The procedure must also describe how the ROV will be utilized during this operation.

(ii) Document the results of each test and make them available to BSEE upon request.

■ 27. Revise § 250.618 to read as follows:

§ 250.618 What are my BOP inspection and maintenance requirements?

(a) *BOP inspections.* (1) You must inspect your BOP system to ensure that the equipment functions properly. The BOP inspections must meet or exceed the provisions of Sections 17.10 and 18.10, Inspections, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You must document how you met or exceeded the provisions of Sections 17.10 and 18.10 described in API RP 53, the procedures used, record the results, and make the records available to BSEE upon request. You must maintain your

records on the rig for 2 years from the date the records are created, or for a longer period if directed by BSEE.

(2) You must visually inspect your surface BOP system on a daily basis. You must visually inspect your subsea BOP system and marine riser at least once every 3 days if weather and sea conditions permit. You may use television cameras to inspect subsea equipment. The BSEE District Manager may approve alternate methods and frequencies to inspect a marine riser.

(b) *BOP maintenance.* You must maintain your BOP system to ensure that the equipment functions properly. The BOP maintenance must meet or exceed the provisions of Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You must document how you met or exceeded the provisions of Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, the procedures used, record the results, and make the records available to BSEE upon request. You must maintain your records on the rig for 2 years from the date the records are created, or for a longer period if directed by BSEE.

■ 28. Amend § 250.1500 by revising the definition for “Well-control” to read as follows:

§ 250.1500 Definitions

* * * * *

Well-control means methods used to minimize the potential for the well to flow or kick and to maintain control of the well in the event of flow or a kick. Well-control applies to drilling, well-completion, well-workover, abandonment, and well-servicing operations. It includes measures, practices, procedures and equipment, such as fluid flow monitoring, to ensure safe and environmentally protective drilling, completion, abandonment, and workover operations as well as the installation, repair, maintenance, and operation of surface and subsea well-control equipment.

* * * * *

■ 29. Amend § 250.1704 by revising paragraph (g) to read as follows:

§ 250.1704 When must I submit decommissioning applications and reports?

* * * * *

Decommissioning applications and reports	When to submit	Instructions
<p>(g) Form BSEE-0124, Application for Permit to Modify (APM). The submission of your APM must be accompanied by payment of the service fee listed in § 250.125.</p>	<p>(1) Before you temporarily abandon or permanently plug a well or zone</p> <p>(2) Within 30 days after you plug a well</p> <p>(3) Before you install a subsea protective device.</p> <p>(4) Within 30 days after you complete a protective device trawl test</p> <p>(5) Before you remove any casing stub or mud line suspension equipment and any subsea protective device.</p> <p>(6) Within 30 days after you complete site clearance verification activities</p>	<p>(i) Include information required under §§ 250.1712 and 250.1721.</p> <p>(ii) When using a BOP for abandonment operations include information required under § 250.1705.</p> <p>Include information required under § 250.1717. Refer to § 250.1722(a).</p> <p>Include information required under § 250.1722(d).</p> <p>Refer to § 250.1723.</p> <p>Include information required under § 250.1743(a).</p>

■ 30. Add § 250.1705 to read as follows:

§ 250.1705 What BOP information must I submit?

If you plan to use a BOP for abandonment operations, your decommissioning application must include the following BOP descriptions:

(a) A description of the BOP system and system components, including pressure ratings of BOP equipment and proposed BOP test pressures;

(b) A schematic drawing of the BOP system that shows the inside diameter of the BOP stack, number and type of preventers, all control systems and pods, location of choke and kill lines, and associated valves;

(c) Independent third-party verification and supporting documentation that show the blind-shear rams installed in the BOP stack are capable of shearing any drill pipe (including workstring and tubing) in the hole under maximum anticipated surface pressure. The documentation must include actual shearing and subsequent pressure integrity test results for the most rigid pipe to be used and calculations of shearing capacity of all pipe to be used in the well, including correction for Maximum Anticipated Surface Pressure (MASP);

(d) When you use a subsea BOP stack, independent third-party verification that shows:

(1) The BOP stack is designed for the specific equipment on the rig and for the specific well design;

(2) The BOP stack has not been compromised or damaged from previous service;

(3) The BOP stack will operate in the conditions in which it will be used; and

(e) The qualifications of the independent third-party referenced in paragraphs (c) and (d) of this section including evidence that:

(1) The independent third-party in this section is a technical classification society, or a licensed professional engineering firm, or a registered professional engineer capable of providing the verifications required under this part.

(2) You must:

(i) Include evidence that the registered professional engineer, or a technical classification society, or engineering firm you are using or its employees hold appropriate licenses to perform the verification in the appropriate jurisdiction, and evidence to demonstrate that the individual, society, or firm has the expertise and experience necessary to perform the required verifications.

(ii) Ensure that an official representative of BSEE will have access to the location to witness any testing or inspections, and verify information submitted to BSEE. Prior to any shearing

ram tests or inspections, you must notify the BSEE District Manager at least 72 hours in advance.

■ 31. Add § 250.1706 to read as follows:

§ 250.1706 What are the requirements for blowout prevention equipment?

If you use a BOP for any well abandonment operations, your BOP must meet the following requirements:

(a) The BOP system, system components, and related well-control equipment must be designed, used, maintained, and tested in a manner necessary to assure well-control in foreseeable conditions and circumstances, including subfreezing conditions. The working pressure rating of the BOP system and system components must exceed the expected surface pressure to which they may be subjected. If the expected surface pressure exceeds the rated working pressure of the annular preventer, you must submit with Form BSEE-0124, requesting approval of the well abandonment operations, a well-control procedure that indicates how the annular preventer will be utilized, and the pressure limitations that will be applied during each mode of pressure control.

(b) The minimum BOP system for well abandonment operations with the tree removed must meet the appropriate standards from the following table:

When . . .	The minimum BOP stack must include . . .
(1) The expected pressure is less than 5,000 psi,	Three BOPs consisting of an annular, one set of pipe rams, and one set of blind-shear rams.
(2) The expected pressure is 5,000 psi or greater or you use multiple tubing strings,	Four BOPs consisting of an annular, two sets of pipe rams, and one set of blind-shear rams.
(3) You handle multiple tubing strings simultaneously,	Four BOPs consisting of an annular, one set of pipe rams, one set of dual pipe rams, and one set of blind-shear rams.
(4) You use a tapered drill string,	(i) At least one set of pipe rams that are capable of sealing around each size of drill string.

When . . .	The minimum BOP stack must include . . .
(5) You use a subsea BOP stack,	(ii) If the expected pressure is greater than 5,000 psi, then you must have at least two sets of pipe rams that are capable of sealing around the larger size drill string. (iii) You may substitute one set of variable bore rams for two sets of pipe rams. The requirements in §250.442(a) of this part.

(c) The BOP systems for well abandonment operations with the tree removed must be equipped with the following:
 (1) A hydraulic-actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure without assistance from a charging system. Accumulator regulators supplied by rig air and without a secondary source of pneumatic supply, must be equipped with manual overrides, or alternately, other devices provided to ensure capability of hydraulic operations if rig air is lost;
 (2) A secondary power source, independent from the primary power source, with sufficient capacity to close all BOP system components and hold them closed;

(3) Locking devices for the pipe-ram preventers;
 (4) At least one remote BOP-control station and one BOP-control station on the rig floor; and
 (5) A choke line and a kill line each equipped with two full opening valves and a choke manifold. At least one of the valves on the choke-line must be remotely controlled. At least one of the valves on the kill line must be remotely controlled, except that a check valve on the kill line in lieu of the remotely controlled valve may be installed, provided two readily accessible manual valves are in place and the check valve is placed between the manual valves and the pump. This equipment must have a pressure rating at least equivalent to the ram preventers. You must install the choke line above the bottom ram and may install the kill line below the bottom ram.

(d) The minimum BOP system components for well abandonment operations with the tree in place and performed through the wellhead inside of conventional tubing using small-diameter jointed pipe (usually 3/4 inch to 1 1/4 inch) as a work string, i.e., small-tubing operations, must include the following:
 (1) Two sets of pipe rams, and
 (2) One set of blind rams.
 (e) The subsea BOP system for well abandonment operations must meet the requirements in § 250.442 of this part.
 (f) For coiled tubing operations with the production tree in place, you must meet the following minimum requirements for the BOP system:
 (1) BOP system components must be in the following order from the top down:

BOP system when expected surface pressures are less than or equal to 3,500 psi	BOP system when expected surface pressures are greater than 3,500 psi	BOP system for wells with returns taken through an outlet on the BOP stack
(i) Stripper or annular-type well-control component, (ii) Hydraulically-operated blind rams, (iii) Hydraulically-operated shear rams, (iv) Kill line inlet, (v) Hydraulically-operated two-way slip rams, (vi) Hydraulically-operated pipe rams,	Stripper or annular-type well-control component, Hydraulically-operated blind rams, Hydraulically-operated shear rams, Kill line inlet, Hydraulically-operated two-way slip rams, Hydraulically-operated pipe rams. Hydraulically-operated blind-shear rams. These rams should be located as close to the tree as practical,	Stripper or annular-type well-control component. Hydraulically-operated blind rams. Hydraulically-operated shear rams. Kill line inlet. Hydraulically-operated two-way slip rams. Hydraulically-operated pipe rams. A flow tee or cross. Hydraulically-operated pipe rams. Hydraulically-operated blind-shear rams on wells with surface pressures >3,500 psi. As an option, the pipe rams can be placed below the blind-shear rams. The blind-shear rams should be located as close to the tree as practical.

(2) You may use a set of hydraulically-operated combination rams for the blind rams and shear rams.
 (3) You may use a set of hydraulically-operated combination rams for the hydraulic two-way slip rams and the hydraulically-operated pipe rams.
 (4) You must attach a dual check valve assembly to the coiled tubing connector at the downhole end of the coiled tubing string for all coiled tubing well abandonment operations. If you plan to conduct operations without downhole check valves, you must describe alternate procedures and equipment in Form BSEE-0124,

Application for Permit to Modify, and have it approved by the BSEE District Manager.
 (5) You must have a kill line and a separate choke line. You must equip each line with two full-opening valves and at least one of the valves must be remotely controlled. You may use a manual valve instead of the remotely controlled valve on the kill line if you install a check valve between the two full-opening manual valves and the pump or manifold. The valves must have a working pressure rating equal to or greater than the working pressure rating of the connection to which they are attached, and you must install them

between the well-control stack and the choke or kill line. For operations with expected surface pressures greater than 3,500 psi, the kill line must be connected to a pump or manifold. You must not use the kill line inlet on the BOP stack for taking fluid returns from the wellbore.
 (6) You must have a hydraulic-actuating system that provides sufficient accumulator capacity to close-open-close each component in the BOP stack. This cycle must be completed with at least 200 psi above the pre-charge pressure, without assistance from a charging system.

(7) All connections used in the surface BOP system from the tree to the uppermost required ram must be flanged, including the connections between the well-control stack and the first full-opening valve on the choke line and the kill line.

(g) The minimum BOP system components for well abandonment operations with the tree in place and performed by moving tubing or drill pipe in or out of a well under pressure utilizing equipment specifically designed for that purpose, i.e., snubbing operations, must include the following:

(1) One set of pipe rams hydraulically operated, and

(2) Two sets of stripper-type pipe rams hydraulically operated with spacer spool.

(h) An inside BOP or a spring-loaded, back-pressure safety valve, and an essentially full-opening, work-string safety valve in the open position must be maintained on the rig floor at all times during well abandonment operations when the tree is removed or during well abandonment operations with the tree installed and using small tubing as the work string. A wrench to fit the work-string safety valve must be readily available. Proper connections must be readily available for inserting valves in the work string. The full-opening safety valve is not required for coiled tubing or snubbing operations.

■ 32. Add § 250.1707 to read as follows:

§ 250.1707 What are the requirements for blowout preventer system testing, records, and drills?

(a) *BOP pressure tests.* When you pressure test the BOP system, you must conduct a low-pressure test and a high-pressure test for each component. You must conduct the low-pressure test before the high-pressure test. For purposes of this section, BOP system components include ram-type BOP's, related control equipment, choke and kill lines, and valves, manifolds, strippers, and safety valves. Surface BOP systems must be pressure tested with water.

(1) *Low pressure tests.* You must successfully test all BOP system components to a low pressure between 200 and 300 psi. Any initial pressure equal to or greater than 300 psi must be bled back to a pressure between 200 and 300 psi before starting the test. If the initial pressure exceeds 500 psi, you must bleed back to zero before starting the test.

(2) *High pressure tests.* You must successfully test all BOP system components to the rated working pressure of the BOP equipment, or as otherwise approved by the BSEE District

Manager. You must successfully test the annular-type BOP at 70 percent of its rated working pressure or as otherwise approved by the BSEE District Manager.

(3) *Other testing requirements.* You must test variable bore pipe rams against the largest and smallest sizes of tubulars in use (jointed pipe, seamless pipe) in the well.

(b) You must test the BOP systems at the following times:

(1) When installed;

(2) At least every 7 days, alternating between control stations and at staggered intervals to allow each crew to operate the equipment. If either control system is not functional, further operations must be suspended until the nonfunctional system is operable. The test every 7 days is not required for blind or blind-shear rams. The blind or blind-shear rams must be tested at least once every 30 days during operation. A longer period between blowout preventer tests is allowed when there is a stuck pipe or pressure-control operation and remedial efforts are being performed. The tests must be conducted as soon as possible and before normal operations resume. The reason for postponing testing must be entered into the operations log. The BSEE District Manager may require alternate test frequencies if conditions or BOP performance warrant.

(3) Following repairs that require disconnecting a pressure seal in the assembly, the affected seal will be pressure tested.

(c) All personnel engaged in well abandonment operations must participate in a weekly BOP drill to familiarize crew members with appropriate safety measures.

(d) You may conduct a stump test for the BOP system on location. A plan describing the stump test procedures must be included in your Application for Permit to Modify, Form BSEE-0124, and must be approved by the BSEE District Manager.

(e) You must test the coiled tubing connector to a low pressure of 200 to 300 psi, followed by a high pressure test to the rated working pressure of the connector or the expected surface pressure, whichever is less. You must successfully pressure test the dual check valves to the rated working pressure of the connector, the rated working pressure of the dual check valve, expected surface pressure, or the collapse pressure of the coiled tubing, whichever is less.

(f) You must record test pressures during BOP and coiled tubing tests on a pressure chart, or with a digital recorder, unless otherwise approved by the BSEE District Manager. The test

interval for each BOP system component must be 5 minutes, except for coiled tubing operations, which must include a 10 minute high-pressure test for the coiled tubing string. Your representative at the facility must certify that the charts are correct.

(g) The time, date, and results of all pressure tests, actuations, inspections, and crew drills of the BOP system, system components, and marine risers must be recorded in the operations log. The BOP tests must be documented in accordance with the following:

(1) The documentation must indicate the sequential order of BOP and auxiliary equipment testing, the pressure, and duration of each test. As an alternate, the documentation in the operations log may reference a BOP test plan that contains the required information and is retained on file at the facility.

(2) The control station used during the test must be identified in the operations log. For a subsea system, the pod used during the test must be identified in the operations log.

(3) Any problems or irregularities observed during BOP and auxiliary equipment testing and any actions taken to remedy such problems or irregularities, must be noted in the operations log.

(4) Documentation required to be entered in the operations log may instead be referenced in the operations log. You must make all records including pressure charts, operations log, and referenced documents pertaining to BOP tests, actuations, and inspections, available for BSEE review at the facility for the duration of well abandonment activity. Following completion of the well abandonment activity, you must retain all such records for a period of two years at the facility, at the lessee's field office nearest the OCS facility, or at another location conveniently available to the BSEE District Manager.

(h) Stump test a subsea BOP system before installation. You must use water to conduct this test. You may use drilling fluids to conduct subsequent tests of a subsea BOP system. You must stump test the subsea BOP within 30 days of the initial test on the seafloor. You must:

(1) Test all ROV intervention functions on your subsea BOP stack during the stump test. Each ROV must be fully compatible with the BOP stack ROV intervention panels. You must also test and verify closure of at least one set of rams during the initial test on the seafloor. You must submit test procedures, including how you will test each ROV function, with your APM for

BSEE District Manager approval. You must:

(i) Ensure that the ROV hot stabs are function tested and are capable of actuating, at a minimum, one set of pipe rams and one set of blind-shear rams and unlatching the LMRP;

(ii) Document all your test results and make them available to BSEE upon request; and

(2) Function test autoshear and deadman systems on your subsea BOP stack during the stump test. You must also test the deadman system and verify closure of at least one set of blind-shear rams during the initial test on the seafloor. When you conduct the initial deadman system test on the seafloor you must ensure the well is secure and, if hydrocarbons have been present, appropriate barriers are in place to isolate hydrocarbons from the wellhead. You must also have an ROV on bottom during the test. You must:

(i) Submit test procedures with your APM for BSEE District Manager approval. The procedures for these function tests must include documentation of the controls and circuitry of the system utilized during each test. The procedure must also describe how the ROV will be utilized during this operation.

(ii) Document the results of each test and make them available to BSEE upon request.

■ 33. Add § 250.1708 to read as follows:

§ 250.1708 What are my BOP inspection and maintenance requirements?

(a) *BOP inspections.* (1) You must inspect your BOP system to ensure that the equipment functions properly. The BOP inspections must meet or exceed the provisions of Sections 17.10 and 18.10, Inspections, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You

must document how you met or exceeded the provisions of Sections 17.10 and 18.10 described in API RP 53, document the procedures used, record the results, and make the records available to BSEE upon request. You must maintain your records on the rig for 2 years from the date the records are created, or for a longer period if directed by BSEE.

(2) You must visually inspect your BOP system and marine riser at least once every 3 days if weather and sea conditions permit. You may use television cameras to inspect this equipment. The BSEE District Manager may approve alternate methods and frequencies to inspect a marine riser.

(b) *BOP maintenance.* You must maintain your BOP system to ensure that the equipment functions properly. The BOP maintenance must meet or exceed the provisions of Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You must document how you met or exceeded the provisions of Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, document the procedures used, record the results, and make the records available to BSEE upon request. You must maintain your records on the rig for 2 years from the date the records are created, or for a longer period if directed by BSEE.

■ 34. Add § 250.1709 to read as follows:

§ 250.1709 What are my well-control fluid requirements?

Before you displace kill-weight fluid from the wellbore and/or riser to an underbalanced state, you must obtain approval from the BSEE District Manager. To obtain approval, you must

submit with your APM, your reasons for displacing the kill-weight fluid and provide detailed step-by-step written procedures describing how you will safely displace these fluids. The step-by-step displacement procedures must address the following:

(a) Number and type of independent barriers, as described in § 250.420(b)(3), that are in place for each flow path that requires such barriers,

(b) Tests you will conduct to ensure integrity of independent barriers,

(c) BOP procedures you will use while displacing kill weight fluids, and

(d) Procedures you will use to monitor the volumes and rates of fluids entering and leaving the wellbore.

■ 35. Amend § 250.1712 by revising paragraph (g) to read as follows:

§ 250.1712 What information must I submit before I permanently plug a well or zone?

* * * * *

(g) Certification by a Registered Professional Engineer of the well abandonment design and procedures and that all plugs meet the requirements in the table in § 250.1715. In addition to the requirements of § 250.1715, the Registered Professional Engineer must also certify the design will include two independent barriers, one of which must be a mechanical barrier, in the center wellbore as described in § 250.420(b)(3). The Registered Professional Engineer must be registered in a State of the United States and have sufficient expertise and experience to perform the certification. You must submit this certification with your APM (Form BSEE-0124).

■ 36. Amend § 250.1715 by adding paragraph (a)(11) to read as follows:

§ 250.1715 How must I permanently plug a well?

(a) * * *

If you have . . . Then you must use . . .

*	*	*	*	*	*	*
(11) Removed the barriers required in § 250.420(b)(3) for the well to be completed.					Two independent barriers, one of which must be a mechanical barrier, in the center wellbore as described in § 250.420(b)(3) once the well is to be placed in a permanent or temporary abandonment.	

■ 37. Amend § 250.1721 by revising paragraph (h) to read as follows:

§ 250.1721 If I temporarily abandon a well that I plan to re-enter, what must I do?

* * * * *

(h) Submit certification by a Registered Professional Engineer of the

well abandonment design and procedures and that all plugs meet the requirements of paragraph (b) of this section. In addition to the requirements of paragraph (b) of this section, the Registered Professional Engineer must also certify the design will include two independent barriers, one of which must be a mechanical barrier, in the

center wellbore as described in § 250.420(b)(3). The Registered Professional Engineer must be registered in a State of the United States and have sufficient expertise and experience to perform the certification. You must submit this certification with your APM

(Form BSEE-0124) required by
§ 250.1712 of this part.

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To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the House of Representatives at no net cost to the Federal Government. (Aug. 16, 2012; 126 Stat. 1303)

H.R. 3670/P.L. 112-171

To require the Transportation Security Administration to comply with the Uniformed

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Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012 (Aug. 16, 2012; 126 Stat. 1307)

S. 3510/P.L. 112-173

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

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